International Labour Conference
87th Session 1999

Report III
(Part 1A)

Report of the Committee of Experts on the Application of Conventions and Recommendations

General report and observations concerning particular countries

International Labour Office Geneva

International Labour Conference
87th Session 1999

Report III
(Part 1A)

Third item on the agenda:
Information and reports on the application
of Conventions and Recommendations

Report of the Committee of Experts on the Application of Conventions and Recommendations

(articles 19, 22 and 35 of the Constitution)

General Report
and observations concerning particular countries

International Labour Office Geneva

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Contents

Page

Index to comments made by the Committee, by country vii

Part One. General Report

I. **Introduction** 3

II. **General** 8
  Membership of the Organization 8
  New standards adopted by the Conference in 1998 and the coming into force of Conventions 8
  Ratifications and denunciations 8
  Constitutional and other procedures 12
    A. Complaints submitted under article 26 of the ILO Constitution 12
    B. Representations submitted under article 24 of the ILO Constitution 13
    C. Special procedures concerning freedom of association 15
  Functions in regard to other international instruments of universal and regional character 15
    A. United Nations treaties concerning human rights 15
    B. European Code of Social Security and its Protocol 16
    C. European Social Charter and Additional Protocol 17
  Collaboration with other international organizations 17
    Cooperation in the field of standards with the United Nations and the specialized agencies 17
  Matters relating to human rights 18
    50th anniversary of the Universal Declaration of Human Rights 18
    Declaration of Fundamental Principles and Rights at Work and its Follow-up 18
    Other human rights issues 18
    Operational activities and the supervision of international labour standards . . 19
  Questions concerning the application of Conventions 20
    Application of the Forced Labour Convention, 1930 (No. 29) 20
    Application of the Seafarers' Identity Documents Convention, 1958 (No. 108) 21
    Application of the Employment Policy Convention, 1964 (No. 122) 24
    Application of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) 26
    Application of Conventions on child labour 27
    Application of Conventions in export processing zones and enterprises 28

Page

III. **Freedom of association and collective bargaining** 29

Special reports on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), from countries that have not ratified them 29

Convention No. 87 33

Absence of any workers' trade union 33

Convention No. 98 37

Anti-union discrimination 37

IV. **Technical assistance in the field of standards** 40

A. **Direct contacts** 40

B. **Promotional activities** 40

C. **Standards and multidisciplinary advisory teams** 41

V. **Role of employers' and workers' organizations** 42

Observations made by employers' and workers' organizations 43

VI. **Reports on ratified Conventions** (articles 22 and 35 of the Constitution) 44

Supply of reports 44

Reports requested and received 45

Compliance with reporting obligations 45

Late reports 46

Supply of first reports 47

Replies to the comments of the supervisory bodies 47

Examination of reports 48

Observations and direct requests 49

Cases of progress 49

Practical application 51

VII. **Submission of Conventions and Recommendations to the competent authorities** (article 19, paragraphs 5, 6 and 7, of the Constitution) 52

84th (Maritime) Session 52

85th Session 53

31st to 83rd Sessions 53

General aspects 53

Comments of the Committee and replies from governments 55

Special problems 56

VIII. **Instruments chosen for reports under article 19 of the Constitution** 56

General Survey 57

Appendix I. List of the 61member States which have been asked to submit reports on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and/or on the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (article 19 of the Constitution) 58

Appendix II. List of observations made by employers' and workers' organizations 60

Page

Part Two. Observations concerning particular countries

I. **Observations concerning reports on ratified Conventions** (article 22 of the Constitution) 67
A. **General observations** 67
B. **Individual observations** 71
Appendix I. Table of reports received on ratified Conventions as at 11 December 1998 577
Appendix II. Statistical table of reports received on ratified Conventions as at 11 December 1998 589

II. **Observations on the application of Conventions in non-metropolitan territories** (article 22 and article 35, paragraphs 6 and 8, of the Constitution) . . . 591
A. **General observations** 591
B. **Individual observations** 591
Appendix. Table of reports received on ratified Conventions (non-metropolitan territories) as at 11 December 1998 609

III. **Observations concerning the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference** (article 19 of the Constitution) 612
Appendix I. Information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities 630
Appendix II. Overall position of member States as at 11 December 1998 637
Appendix III. Summary of information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities 639

Part Three. General Survey on the reports on the Migration for Employment Convention (Revised), 1949 (No. 97), and Recommendation , 1949 (No. 86), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and Recommendation, 1975 (No. 151)

This part of the report is published in a separate volume as Report III (Part 1B).

Index to comments made by the Committee, by country

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the Governments (not published in the present report)[2]
Afghanistan	General Report, paras. 186, 197, 231, 235 I A and B, Nos. 100, 105, 111, 141, 142 III	Art. 22, Nos. 13, 105, 137, 140
Albania	I B, Nos. 29, 98 III	Art. 22, Nos. 29, 52, 87
Algeria	I B, Nos. 13, 29, 32, 62, 81, 87, 88, 92, 105, 119, 122	Art. 22, Nos. 29, 68, 69, 91, 92, 99, 100, 105, 120, 138, 142, 144 Subm.
Angola	I B, Nos. 26, 100, 111 III	Art. 22, Nos. 29, 45, 81, 98, 100, 105, 111
Antigua and Barbuda	General Report, paras. 186, 197 I A and B, No. 87	Art. 22, Nos. 29, 81, 111, 138 Subm.
Argentina	I B, Nos. 1, 3, 9, 26, 32, 35, 68, 87, 88, 95, 107, 154	Art. 22, Nos. 3, 26, 29, 87, 107, 139 Subm.
Armenia	General Report, paras. 186, 193, 235 I A III	
Australia	General Report, paras. 186, 197 I B, Nos. 29, 87, 98, 144	Art. 22, Nos. 29, 87, 92, 99, 100, 133, 137 Art. 35, general Art. 35, Nos. 3, 12, 17, 19, 122 Subm.
Austria	I B, Nos. 29, 87, 103	Art. 22, No. 99 Subm.
Azerbaijan	I B, No. 87	Art. 22, Nos. 13, 29, 88, 92, 100, 103, 111, 131, 133, 142, 147, 160 Subm.
Bahamas	I B, Nos. 105, 144	Art. 22, Nos. 5, 29, 105 Subm.
Bahrain		Art. 22, Nos. 14, 29 Subm.
Bangladesh	I B, Nos. 29, 59, 87, 107, 111 III	Art. 22, Nos. 87, 96, 107

Country	**Observations made by the Committee (published in the present report)**[1]	**Direct requests addressed by the Committee to the Governments (not published in the present report)**[2]
Barbados	I B, Nos. 87, 100	Art. 22, Nos. 26, 100, 105, 111, 122, 144 Subm.
Belarus	I B, No. 87	Art. 22, Nos. 26, 29, 81, 87, 88, 100, 105, 108, 120, 122, 142, 144, 150 Subm.
Belgium	I B, Nos. 26, 87 III	Art. 22, Nos. 99, 100, 140
Belize	General Report, paras. 186, 197, 231 I B, Nos. 87, 105 III	Art. 22, general Art. 22, Nos. 5, 8, 29, 88, 105
Benin	I B, Nos. 87, 100, 105 III	Art. 22, general Art. 22, Nos. 5, 13, 26, 29, 87, 100, 105
Bolivia	I B, Nos. 1, 14, 20, 30, 77, 87, 88, 98, 106, 121, 122, 128, 169 III	Art. 22, general Art. 22, Nos. 100, 105, 111, 160
Bosnia and Herzegovina	General Report, paras. 186, 197 I A and B, No. 87 III	Art. 22, No. 122
Botswana		Subm.
Brazil	General Report, para. 231 I B, Nos. 5, 29, 81, 94, 95, 98, 105, 107, 117, 122, 131, 137, 142, 155 III	Art. 22, Nos. 45, 81, 88, 100, 117, 126, 133, 168
Bulgaria	I B, Nos. 3, 87 III	Art. 22, general Art. 22, Nos. 9, 26, 27, 29, 34, 100, 108, 120
Burkina Faso	General Report, paras. 186, 197 I B, No. 87	Art. 22, general Art. 22, Nos. 3, 29, 33, 81, 100, 129, 131 Subm.
Burundi	General Report, paras. 186, 193, 197 I A and B, Nos. 11, 29, 87	Art. 22, Nos. 19, 29, 81, 87, 94, 105 Subm.
Cambodia	General Report, para. 231 I B, No. 29	Art. 22, Nos. 13, 122 Subm.
Cameroon	General Report, paras. 186, 231 I B, Nos. 9, 29, 87, 98, 105 III	Art. 22, general Art. 22, Nos. 3, 10, 13, 29, 33, 100, 105, 111, 122, 131, 132, 162

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the Governments (not published in the present report)[2]
Canada	I B, Nos. 87, 100	Art. 22, Nos. 26, 87, 100 Subm.
Cape Verde	General Report, paras. 186, 197	Art. 22, general Art. 22, Nos. 29, 81, 100, 118 Subm.
Central African Republic	General Report, para. 231 I B, Nos. 29, 52, 62, 87, 105 III	Art. 22, general Art. 22, Nos. 2, 5, 26, 29, 99, 100, 117
Chad	I B, Nos. 26, 29, 98, 100, 105 III	Art. 22, Nos. 87, 100
Chile	I B, Nos. 29, 35, 36, 37, 38, 111, 127 III	Art. 22, Nos. 5, 26, 29, 32, 100, 111, 156, 159 Subm.
China		Art. 22, Nos. 19, 22, 23, 26, 32, 59, 100 Subm.
Hong Kong Special Administrative Region	General Report, para. 186	Art. 22, general Art. 22, No. 105
Colombia	I B, Nos. 3, 5, 24, 25, 29, 87, 95, 98, 105, 169	Art. 22, Nos. 3, 24, 88, 98, 100, 136, 169 Subm.
Comoros	General Report, paras. 186, 197, 231 I B, Nos. 29, 95 III	Art. 22, general Art. 22, Nos. 1, 13, 14, 26, 95, 99, 100, 105, 122
Congo	General Report, paras. 186, 197, 231 I B, Nos. 29, 87, 95 III	Art. 22, general Art. 22, No. 26
Costa Rica	I B, Nos. 81, 87, 88, 98, 111, 122, 131, 135, 138, 144 III	Art. 22, Nos. 81, 87, 105, 130, 138, 169
Côte d'Ivoire	I B, Nos. 3, 29, 33, 87, 98, 135, 144	Art. 22, Nos. 3, 5, 26, 29, 33, 99, 100, 110, 111, 133 Subm.
Croatia	I B, Nos. 48, 87, 98, 102, 111, 119, 135, 155	Art. 22, Nos. 13, 19, 27, 29, 45, 56, 69, 74, 81, 100, 102, 103, 111, 113, 121, 122, 136, 139, 147 Subm.

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the Governments (not published in the present report)[2]
Cuba	I B, Nos. 87, 105	Art. 22, Nos. 13, 81, 105, 131 Subm.
Cyprus	General Report, para. 193 I A and B, Nos. 87, 105, 111	Art. 22, Nos. 23, 92, 111, 122, 135 Subm.
Czech Republic	I B, Nos. 111, 122, 155	Art. 22, Nos. 5, 10, 19, 29, 87, 100, 111, 120, 123, 155 Subm.
Democratic Republic of the Congo	General Report, paras. 186, 197 I A and B, Nos. 29, 88, 94, 98, 119	Art. 22, Nos. 26, 62, 100, 117, 118 Subm.
Denmark	General Report, paras. 186, 197 I B, No. 87 II A	Art. 22, Nos. 29, 87, 88, 100, 111, 119, 120, 130, 139 Art. 35, Nos. 5, 9, 14, 16, 92, 106 Subm.
Djibouti	General Report, paras. 186, 197, 235 I B, Nos. 9, 24, 37, 38, 87, 88, 95, 100 III	Art. 22, general Art. 22, Nos. 1, 19, 26, 29, 53, 55, 69, 73, 81, 91, 94, 95, 96, 99, 100, 105, 106, 108, 115, 120, 122, 125, 126
Dominica	General Report, paras. 186, 197 III	Art. 22, general Art. 22, Nos. 8, 26, 29, 87, 97, 100, 111
Dominican Republic	I B, Nos. 87, 88, 95	Art. 22, Nos. 5, 26, 29, 45, 87, 88, 95, 100, 159 Subm.
Ecuador	I B, Nos. 87, 98, 100, 101, 103, 105, 111, 122, 144, 153 III	Art. 22, Nos. 29, 88, 100, 110, 111, 118, 142
Egypt	I B, Nos. 9, 73, 87, 88, 105	Art. 22, Nos. 29, 87, 100, 105, 131, 134, 137
El Salvador	I B, No. 105 III	Art. 22, Nos. 29, 77, 78, 88, 105, 122, 138, 141, 142, 160
Equatorial Guinea	General Report, paras. 186, 197 I B, No. 1 III	Art. 22, general Art. 22, Nos. 30, 138
Eritrea	III	
Estonia		Art. 22, Nos. 2, 7, 9, 22, 23, 53, 87, 98, 135 Subm.
Ethiopia	I B, Nos. 87, 98	Art. 22, Nos. 14, 88, 96, 98
Fiji	General Report, paras. 186, 197, 235 I B, No. 105	Art. 22, general Art. 22, Nos. 8, 26, 29, 105 Subm.

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the Governments (not published in the present report)[2]
Finland	I B, Nos. 73, 100, 122, 152	Art. 22, Nos. 13, 47, 81, 87, 88, 119, 120, 129, 140, 142, 147 Subm.
France	General Report, paras. 186, 197 I B, Nos. 29, 35, 36, 37, 38, 62, 118, 122, 133, 137, 138 II B, Nos. 8, 19, 22, 35, 36, 37, 38, 73, 81, 82, 129, 134, 149	Art. 22, general Art. 22, Nos. 92, 96, 100, 105, 129, 131, 136, 139, 142, 144, 146 Art. 35, general Art. 35, Nos. 5, 9, 13, 29, 53, 69, 81, 92, 100, 111, 115, 120, 122, 129, 131, 136, 142, 146, 149 Subm.
Gabon	I B, Nos. 98, 135, 144, 158 III	Art. 22, Nos. 3, 26, 29, 81, 87, 99, 100, 105, 111, 158
Gambia		Subm.
Georgia	General Report, paras. 186, 235 I A III	
Germany	I B, Nos. 29, 87, 100, 122	Art. 22, Nos. 3, 26, 92, 99, 126, 132, 133, 140, 162 Subm.
Ghana	General Report, paras. 186, 197 I B, Nos. 87, 94, 98, 105 III	Art. 22, general Art. 22, Nos. 26, 29, 30, 59, 74, 87, 100, 103, 105, 111, 117, 120
Greece	I B, Nos. 29, 87, 98, 105	Art. 22, Nos. 45, 71, 100, 103, 105, 133, 151, 154
Grenada	General Report, paras. 186, 193, 197 I A and B, No. 87 III	Art. 22, Nos. 26, 58, 81, 99
Guatemala	General Report, para. 231 I B, Nos. 1, 29, 87, 105, 169 III	Art. 22, Nos. 29, 58, 59, 64, 81, 88, 100, 112, 122, 129, 131, 149, 154, 156, 159, 169
Guinea	General Report, paras. 186, 197 I B, Nos. 26, 87, 98, 99, 105, 111, 120 III	Art. 22, general Art. 22, Nos. 16, 29, 62, 100, 111, 113, 117, 119, 122, 133, 136, 140, 144, 159 Subm.
Guinea-Bissau	General Report, paras. 186, 197, 231 I B, Nos. 45, 100 III	Art. 22, general Art. 22, Nos. 19, 26, 29, 74, 81, 88, 91, 100, 105, 108, 111

Country	**Observations made by the Committee (published in the present report)**[1]	**Direct requests addressed by the Committee to the Governments (not published in the present report)**[2]
Guyana	I B, Nos. 2, 87, 100, 136	Art. 22, Nos. 5, 100, 131, 140 Subm.
Haiti	General Report, paras. 186, 197, 231, 235 I B, Nos. 29, 87, 98, 105 III	Art. 22, general Art. 22, Nos. 5, 45, 100, 111
Honduras	General Report, para. 231 I B, Nos. 87, 98, 122 III	Art. 22, No. 111
Hungary	III	Art. 22, Nos. 26, 45, 81, 88, 99, 100, 127, 129, 142, 145, 154, 163, 164, 165
Iceland	I B, No. 98	Art. 22, Nos. 108, 139
India	General Report, para. 231 I B, Nos. 1, 5, 29, 89, 100, 111, 141, 144 III	Art. 22, Nos. 88, 111
Indonesia	I B, No. 29	Art. 22, Nos. 69, 100 Subm.
Islamic Republic of Iran	I B, No. 111	Art. 22, No. 122 Subm.
Iraq	General Report, paras. 186, 197 I B, Nos. 8, 13, 92, 105, 132, 135	Art. 22, general Art. 22, Nos. 29, 81, 100, 105, 120, 131, 136, 138, 140, 142, 146, 152, 167 Subm.
Ireland	I B, Nos. 23, 105 III	Art. 22, Nos. 26, 99, 100, 139, 144, 160
Israel	III	Art. 22, Nos. 100, 105, 111
Italy	I B, Nos. 32, 81, 122, 136, 147	Art. 22, Nos. 26, 29, 45, 68, 99, 100, 105, 147 Subm.
Jamaica	I B, Nos. 8, 29, 81, 87, 98	Art. 22, Nos. 26, 81, 100, 105, 111, 117, 150
Japan	I B, Nos. 29, 87, 98, 100	Art. 22, Nos. 81, 120, 131, 156
Jordan	I B, Nos. 81, 106	Art. 22, Nos. 29, 81, 100, 105, 142 Subm.
Kazakhstan	General Report, para. 235 III	
Kenya	General Report, paras. 186, 197 I B, Nos. 29, 105 III	Art. 22, general Art. 22, Nos. 29, 99, 105, 131, 142, 146

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the Governments (not published in the present report)[2]
Republic of Korea		Art. 22, Nos. 81, 142
Kuwait	I B, Nos. 1, 30, 87, 106	Art. 22, Nos. 29, 81, 111 Subm.
Kyrgyzstan	General Report, paras. 186, 193, 197, 231 I A and B, No. 87 III	Art. 22, general Art. 22, Nos. 29, 87, 98, 100, 108, 122, 147
Lao People's Democratic Republic		Art. 22, Nos. 13, 29 Subm.
Latvia	General Report, paras. 186, 193, 197 I A and B, Nos. 87, 119, 131 III	Art. 22, general Art. 22, Nos. 87, 98, 100, 105, 108, 115, 120, 131, 142, 144, 149, 160
Lebanon	I B, No. 81 III	Art. 22, Nos. 9, 29, 58, 59, 81, 100, 105, 120, 131, 133
Lesotho	General Report, para. 235 I B, No. 5	Art. 22, Nos. 29, 87 Subm.
Liberia	General Report, paras. 186, 193, 197, 231, 235 I A and B, Nos. 22, 29, 55, 58, 87, 92, 98, 105, 112, 113, 114 III	Art. 22, Nos. 53, 105, 111
Libyan Arab Jamahiriya	General Report, paras. 186, 197, 235 I B, Nos. 95, 98, 102, 103, 105, 118, 121, 128, 130	Art. 22, general Art. 22, Nos. 1, 29, 52, 53, 81, 88, 95, 100, 102, 118, 121, 122, 128, 130, 138 Subm.
Lithuania	III	Art. 22, Nos. 27, 29, 79, 81, 87, 88, 100, 105, 131, 135, 142, 144, 154, 171, 173
Luxembourg		Art. 22, Nos. 8, 13, 22, 26, 29, 53, 69, 73, 87, 100, 108 Subm.
Madagascar	General Report, paras. 186, 197, 231 I B, Nos. 29, 87, 100, 119, 120 III	Art. 22, general Art. 22, Nos. 81, 87, 100, 111, 122, 129
Malawi		Art. 22, Nos. 26, 98, 99, 100, 111, 144 Subm.

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the Governments (not published in the present report)[2]
Malaysia	General Report, para. 186 I B, Nos. 19, 97, 98	Art. 22, general Art. 22, Nos. 29, 119 Subm.
Mali	General Report, paras. 186, 193, 197 I A and B, Nos. 81, 87 III	Art. 22, Nos. 13, 26, 29, 81, 100, 105, 111
Malta	General Report, paras. 186, 197 I B, No. 87	Art. 22, general Art. 22, Nos. 1, 13, 45, 96, 100, 111, 117, 136 Subm.
Mauritania	General Report, paras. 186, 197 I B, Nos. 29, 53, 87, 118 III	Art. 22, general Art. 22, Nos. 13, 26, 29, 118, 122
Mauritius	I B, No. 94 III	Art. 22, Nos. 26, 29, 99, 160
Mexico	I B, Nos. 9, 22, 87, 102, 169	Art. 22, Nos. 22, 45, 87, 100, 118, 131, 163, 169, 172 Subm.
Republic of Moldova	General Report, paras. 186, 193, 235 I A III	
Mongolia	General Report, paras. 186, 197 III	Art. 22, general Art. 22, Nos. 87, 100, 122
Morocco	I B, Nos. 26, 29, 81, 98, 99, 100, 105, 111, 119, 122, 136 III	Art. 22, Nos. 2, 26, 29, 81, 99, 100, 111, 129, 146, 158
Mozambique	I B, No. 87	Art. 22, Nos. 87, 88, 98, 100, 105 Subm.
Myanmar	General Report, para. 186 I B, Nos. 26, 29, 52, 87	Art. 22, general Subm.
Namibia	I B, No. 87	Subm.
Nepal	General Report, para. 197 I B, No. 100	Art. 22, Nos. 98, 144 Subm.
Netherlands	General Report, paras. 186, 197 I B, Nos. 29, 62, 98, 103, 145 II B, No. 145	Art. 22, Nos. 44, 81, 100, 103, 138, 147 Art. 35, general Art. 35, Nos. 14, 25, 29, 87, 94, 95, 101, 105, 106, 122, 131, 135, 137, 138, 140, 142, 146 Subm.

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the Governments (not published in the present report)[2]
New Zealand	I B, Nos. 17, 42, 44, 88, 100, 105, 122, 145	Art. 22, Nos. 17, 29, 47, 59, 68, 133 Art. 35, No. 100 Subm.
Nicaragua	I B, Nos. 3, 87, 95, 142	Art. 22, Nos. 3, 9, 16, 19, 29, 88, 95, 100, 105, 131, 140, 144, 146
Niger	General Report, paras. 186, 197 I B, Nos. 81, 87, 111	Art. 22, general Art. 22, Nos. 29, 81, 100, 111, 119, 131, 138, 142 Subm.
Nigeria	General Report, paras. 186, 193, 197, 235 I A and B, Nos. 87, 98, 100, 105	Art. 22, general Art. 22, Nos. 19, 26, 29, 59, 88, 100, 155 Subm.
Norway	I B, Nos. 87, 170	Art. 22, Nos. 26, 68, 94, 100, 130, 137, 139, 168
Oman		Subm.
Pakistan	I B, Nos. 29, 59, 87, 105	Art. 22, Nos. 29, 105, 159 Subm.
Panama	I B, Nos. 3, 22, 29, 30, 55, 56, 68, 87, 92, 94, 105, 114	Art. 22, Nos. 3, 9, 16, 26, 53, 58, 69, 87, 88, 96, 111, 117, 122, 125 Subm.
Papua New Guinea	General Report, para. 231 III	Art. 22, Nos. 8, 29, 105
Paraguay	General Report, paras. 186, 197 I B, Nos. 29, 60, 87, 105, 120, 122	Art. 22, general Art. 22, Nos. 1, 60, 81, 87, 100, 117, 119, 169 Subm.
Peru	I B, Nos. 24, 25, 29, 35, 36, 37, 38, 39, 40, 44, 56, 71, 81, 87, 88, 98, 102, 122, 152, 169	Art. 22, Nos. 26, 68, 81, 87, 99, 100, 102, 105, 152, 169 Subm.
Philippines	General Report, paras. 186, 197 I B, Nos. 87, 88, 105, 111	Art. 22, general Art. 22, Nos. 17, 87, 98, 99, 100, 105, 110, 111, 122, 144 Subm.
Poland	I B, Nos. 87, 122	Art. 22, Nos. 8, 14, 99, 100, 103, 108, 120, 142
Portugal	I B, Nos. 81, 87, 102, 129, 131, 158, 160	Art. 22, Nos. 68, 81, 87, 100, 102, 129, 131, 145, 158, 160
Qatar		Art. 22, No. 111 Subm.
Romania	I B, Nos. 87, 138	Art. 22, Nos. 9, 16, 29, 100, 108, 131, 137

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the Governments (not published in the present report)[2]
Russian Federation	I B, Nos. 95, 108	Art. 22, Nos. 16, 29, 69, 73, 87, 92, 95, 98, 108, 113, 126, 133, 147 Subm.
Rwanda	General Report, paras. 186, 197 I B, Nos. 12, 26, 87, 111, 123, 138	Art. 22, general Art. 22, Nos. 26, 87, 100, 105, 111, 118 Subm.
Saint Kitts and Nevis		Subm.
Saint Lucia	General Report, paras. 186, 197, 231, 235 I A and B, Nos. 17, 87, 98 III	Art. 22, Nos. 5, 19, 29, 94, 95, 97, 100, 111
Saint Vincent and the Grenadines		Subm.
San Marino		Art. 22, Nos. 29, 88, 100, 105
Sao Tome and Principe	General Report, paras. 186, 197, 231 I B, No. 88 III	Art. 22, general Art. 22, Nos. 17, 81, 87, 98, 100, 111, 144, 159
Saudi Arabia		Art. 22, Nos. 29, 100, 105 Subm.
Senegal	General Report, paras. 186, 197, 231 I B, Nos. 87, 105 III	Art. 22, general Art. 22, Nos. 13, 19, 26, 29, 33, 87, 100, 102, 111, 122, 125
Seychelles	General Report, paras. 186, 193, 197, 231 I A and B, Nos. 8, 87 III	Art. 22, general Art. 22, Nos. 5, 8, 26, 29, 87, 99, 105
Sierra Leone	General Report, paras. 186, 197, 231 I A and B, Nos. 8, 29, 59, 88, 98, 105, 111, 119, 125, 144 III	Art. 22, Nos. 26, 95, 99, 100, 101, 111, 126
Singapore	I B, No. 29	Art. 22, Nos. 5, 81 Subm.
Slovakia	I B, No. 87	Art. 22, general Art. 22, Nos. 12, 17, 26, 34, 99, 102, 128, 130 Subm.

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the Governments (not published in the present report)[2]
Slovenia		Art. 22, Nos. 8, 9, 29, 100, 122, 131, 140 Subm.
Solomon Islands	General Report, paras. 186, 197, 231, 235 I B, No. 8 III	Art. 22, general Art. 22, Nos. 14, 29, 95
Somalia	General Report, paras. 186, 197, 231, 235 I A	Art. 22, No. 111
South Africa	I B, Nos. 45, 87, 98	Art. 22, Nos. 2, 87, 98 Subm.
Spain	I B, Nos. 29, 53, 81, 87, 103, 111, 122, 131, 144, 173 III	Art. 22, Nos. 9, 45, 88, 92, 100, 105, 111, 142, 147, 163, 172, 173
Sri Lanka	I B, Nos. 29, 81, 96, 98, 103, 131, 135, 160 III	Art. 22, Nos. 5, 81, 87, 100, 103, 108, 131, 160
Sudan	I B, Nos. 29, 105, 111 III	Art. 22, Nos. 2, 26, 100, 111, 122
Suriname	I B, No. 144 III	Art. 22, Nos. 13, 98, 105, 112, 154
Swaziland	General Report, para. 231 I B, No. 87 III	Art. 22, Nos. 29, 59, 96, 100, 131, 160
Sweden	I B, Nos. 27, 152, 167	Art. 22, Nos. 111, 120, 139, 147, 164 Subm.
Switzerland	I B, Nos. 87, 100	Art. 22, Nos. 26, 29, 100, 132, 173 Subm.
Syrian Arab Republic	General Report, para. 231 I B, Nos. 1, 29, 87, 105, 117 III	Art. 22, Nos. 87, 100, 129, 131
Tajikistan	General Report, paras. 186, 197 I B, No. 87	Art. 22, general Art. 22, Nos. 29, 87, 92, 98, 100, 122, 147, 160 Subm.
United Republic of Tanzania	General Report, paras. 186, 231 I A and B, Nos. 29, 98, 105, 135 III	Art. 22, general Art. 22, Nos. 59, 94, 98, 105, 131, 134, 137, 142, 144
Thailand	I B, Nos. 29, 105	Art. 22, Nos. 105, 122 Subm.

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the Governments (not published in the present report)[2]
The former Yugoslav Republic of Macedonia	General Report, paras. 186, 235 I B, No. 87	Art. 22, general Art. 22, No. 87 Subm.
Togo	General Report, paras. 186, 197 I B, No. 87	Art. 22, general Art. 22, Nos. 26, 29, 100
Trinidad and Tobago	I B, Nos. 87, 98, 105, 125	Art. 22, general Art. 22, No. 111 Subm.
Tunisia	I B, Nos. 87, 105, 122, 127	Art. 22, Nos. 26, 29, 87, 99, 100, 105, 114, 120, 127, 138, 142 Subm.
Turkey	I B, Nos. 14, 26, 59, 81, 87, 95, 98, 99, 105, 111, 158	Art. 22, Nos. 59, 81, 87, 111, 144, 151
Turkmenistan	General Report, para. 235 III	
Uganda	General Report, paras. 186, 197 I B, Nos. 17, 105	Art. 22, general Art. 22, Nos. 26, 29, 122, 144 Subm.
Ukraine	I B, Nos. 87, 95, 98	Art. 22, Nos. 2, 29, 45, 87, 92, 100, 122, 133, 147, 154, 158
United Arab Emirates	I B, No. 81	Art. 22, Nos. 29, 81 Subm.
United Kingdom	I B, Nos. 29, 87, 100, 102, 105, 147 II B, Nos. 5, 82	Art. 22, Nos. 87, 102 Art. 35, Nos. 5, 26, 59, 82, 99 Subm.
United States	General Report, para. 186	Art. 22, Nos. 105, 150 Art. 35, general Subm.
Uruguay	I B, Nos. 95, 122, 131, 138, 151 III	Art. 22, Nos. 9, 29, 87, 100, 133, 137, 138, 172
Uzbekistan	General Report, paras. 186, 193 I A III	
Venezuela	I B, Nos. 3, 87, 88, 98, 118, 122 III	Art. 22, Nos. 3, 13, 26, 87, 100, 111, 139, 142, 158
Viet Nam		Art. 22, Nos. 5, 45 Subm.
Yemen	General Report, para. 231 I B, Nos. 87, 98, 135 III	Art. 22, Nos. 19, 29, 58, 59, 100, 105, 111, 132, 156, 158
Yugoslavia	I A	

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the Governments (not published in the present report)[2]
Zambia	I B, Nos. 29, 87, 95, 103, 122	Art. 22, Nos. 29, 87, 98, 103, 131 Subm.
Zimbabwe		Art. 22, Nos. 26, 45, 99, 100 Subm.

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[1] The roman numerals and letters refer to sections of Part Two of this report and the arabic numerals to the numbers of the Conventions.

[2] The abbreviations used in respect of direct requests are the following:
"Art. 22": application of ratified Conventions in member States.
"Art. 35": application of ratified Conventions in non-metropolitan territories.
"Subm.": submission of Conventions and Recommendations to the competent authorities.

The numbers refer to Conventions.

PART ONE

General Report

GENERAL REPORT

I. Introduction

1. The Committee of Experts on the Application of Conventions and Recommendations, appointed by the Governing Body of the International Labour Office to examine the information and reports submitted under articles 19, 22 and 35 of the Constitution by States Members of the International Labour Organization on the action taken with regard to Conventions and Recommendations, held its 69th Session in Geneva from 26 November to 11 December 1998. The Committee has the honour to present its report to the Governing Body.

2. The Committee noted with regret that Mr. Uribe Restrepo ceased to be a member and that Sir John Wood asked to be relieved of his duties as a member. It would like to pay tribute to the outstanding contribution they made to the work of the Committee during some 20 years as members, due to their vast experience and their steadfast commitment to the principles of the ILO.

3. The Governing Body has appointed Mr. Anwar Ahmad Rashed AL-FUZAIE, Ms. Laura COX, and Mr. Sergey Pertrovitch MAVRIN as members of the Committee. It gave the Committee great pleasure to welcome them to its present session.

4. The present composition of the Committee is as follows:

Mr. Anwar Ahmad Rashed AL-FUZAIE (Kuwait),

Professor of Private Law of the University of Kuwait; Deputy Vice-President of the Research University of Kuwait; attorney; member of the International Court of Arbitration of the International Chamber of Commerce (ICC); member of the Higher Consultative Committee on the Application of Islamic Law (Palace of the Emir of Kuwait); former Director of Legal Affairs of the Municipality of Kuwait; former Adviser to the Embassy of Kuwait (Paris).

Ms. Janice R. BELLACE (United States),

Samuel Blank Professor, Professor of Legal Studies and Management, and Deputy Dean of the Wharton School, University of Pennsylvania; Senior Editor, Comparative Labor Law and Policy Journal; member of the Executive Board of the US branch of the International Society of Labour Law and Social Security; member of the Public Review Board of the United Automobile, Aerospace and Agricultural Implements Workers' Union; former secretary of the Section on Labor Law, American Bar Association.

Mr. Prafullachandra Natvarlal BHAGWATI (India),

Former Chief Justice of India; former Chief Justice of the High Court of Gujarat; former Chairman, Legal Aid Committee and Judicial Reforms Committee, Government of Gujarat; former Chairman, Committee on Juridicare, Government of India; former Chairman of the Committee appointed by the Government of India for implementing legal aid schemes in the country; member of the International Committee on Human Rights of the International Law Association; member of the Editorial Committee of Reports of the Commonwealth; Ombudsman for the national newspaper *Times of India*; Chairman of the Advisory Board of the Centre for Independence of Judges and Lawyers, Geneva; Vice-President of El Taller; Chairman of the Standing Independent Group for scrutinizing and monitoring mega power projects in India; member of the United Nations Human Rights Committee; member of the International Panel of Eminent Persons for investigating causes of genocide in Rwanda by the OAU.

Ms. Laura COX, QC (United Kingdom),

LL.B., LL.M. of the University of London; Barrister-at-Law, specializing in employment law, discrimination and human rights; Recorder; Head of Cloisters Chambers, Temple, London; Chairperson of the Bar Council Sex Discrimination Committee; member of the Bar Council Equal Opportunities Policy Committee; one of the founding Lawyers of Liberty (formerly the National Council for Civil Liberties); member of the Council of the Independent Human Rights Organisation JUSTICE; member of the Industrial Law Society; member of the Executive Committee of the Employment Law Bar Association; member of the Specialist Bar Associations for Industrial Injuries, Professional Negligence and Public and Administrative Law; member of the Association of Personal Injury Lawyers.

The Right Honourable Sir William DOUGLAS, PC, KCMG (Barbados),

Former Ambassador; former Chief Justice of Barbados; former Chairman, Commonwealth Caribbean Council of Legal Education; former Chairman, Inter-American Juridical Committee; former Judge of the High Court of Jamaica.

Ms. Blanca Ruth ESPONDA ESPINOSA (Mexico),

Doctor of Law; Professor of International Public Law at the Law Faculty of the National Autonomous University of Mexico; former President of the Senate of the Republic (1989) and of the Foreign Relations Committee; former President of the Population and Development Committee of the Chamber of Deputies and member of the Labour and Social Security Committee; former President of the Inter-American Parliamentary Group on Population and Development and former Vice-President of the Global Forum of Spiritual and Parliamentary Leaders; member of the National Federation of Lawyers and of the Lawyers' Forum of Mexico; recipient of the award for Juridical Merit "the Lawyer of the Year (1993)"; former Director of the National Institute for Labour Studies and former editor of the Mexican Labour Review.

Ms. Robyn A. LAYTON, QC (Australia),

Barrister-at-Law; Director, National Rail Corporation; Chairperson of the Human Rights Committee of the Law Society of South Australia; former Commissioner on Health Insurance Commission; former chairperson of the Australian Health Ethics Committee of the National Health and Medical Research Council; former Honorary Solicitor for the South Australian Council for Civil Liberties; former Solicitor for the Central Aboriginal Land Council; former Chairman of the South Australian Sex Discrimination Board; former Judge and Deputy President of the South Australian Industrial Court and Commission; former Deputy President of the Federal Administrative Appeals Tribunal.

Ms. Ewa LETOWSKA (Poland),

Professor of Civil Law (Institute of Legal Studies of the Polish Academy of Sciences); former parliamentary ombudsman; former member of the Legislative Council to the Council of Ministers; former member of the Commission for the Reform of Civil Law; member of the Commission for Civil Law Codification; member of the Helsinki Committee; member of the International Commission of Jurists; member of the Polish Academy of Arts and Sciences; member of the Academy of Comparative Law, Paris.

Mr. Sergey Petrovitch MAVRIN (Russian Federation),

Professor of Labour Law (Law Faculty of the St. Petersburg State University); Doctor of Law; Deputy Dean for International Affairs; Chief of the Labour Law Department; Director of the Interregional Association of Law Schools.

Baron Bernd von MAYDELL (Germany),

Professor of Civil Law, Labour Law and Social Security Law; Director of the Max Planck Institute for Foreign and International Social Law (Munich); President of the German Section of the International Society of Labour Law and Social Security.

Mr. Cassio MESQUITA BARROS (Brazil),

Independent lawyer specializing in labour relations (São Paulo); Titular Professor of Labour Law at the Law School of the public University of São Paulo and the Law School of the private Pontifical Catholic University of São Paulo; Founder and President of the Centre for the Study of International Labour Standards of the University of São Paulo; Academic Adviser, San Martin de Porres University (Lima); winner of the medal for "Honra ao Merito de Trabalho" awarded by Decree of the President of the Republic for a contribution to the development of labour law; winner of the medal for "Honra ao Merito Judiciario do Trabalho" awarded by the Higher Labour Tribunal for his contribution to the administration of justice; honorary member of the Association of Labour Lawyers; Honorary President of the "Asociación Iberoamericana de Derecho del Trabajo y Seguridad Social" (Buenos Aires, Argentina); Honorary President of the "Academia Nacional do Direito do Trabalho" (Rio de Janeiro) (composed of experts in Brazilian labour law); member of the International Academy of Law and Economy (São Paulo); member of the Standing Committee on Social Rights, the advisory body to the Ministry of Labour; Vice-Director of the Faculty of Law of the University of São Paulo, elected by the academic community in October 1998.

Mr. Benjamin Obi NWABUEZE (Nigeria),

LLD (London); Hon. LLD (University of Nigeria); Senior Advocate of Nigeria; 1980 Laureate of the Nigerian National Merit Award; former Professor of Law at the University of Nigeria; former Professor and Dean of the Faculty of Law at the University of Zambia; former member of the Governing Council, Nigerian Institute of International Affairs; Fellow of the Nigerian Institute of Advanced Legal Studies; former member, Council of Legal Education; former Minister of Education for Nigeria; former Constitutional Adviser to the Government of Kenya (1992), Ethiopia (1992) and Zambia (1993).

Mr. Edilbert RAZAFINDRALAMBO (Madagascar),

Honorary First President of the Supreme Court of Madagascar; former President of the High Court of Justice; former Professor of Law at the University of Madagascar; former Arbitrator of the ICSID and of the International Civil Aviation Organization; former member of the International Council for Commercial Arbitration; former member of the International Court of Arbitration of the International Chamber of Commerce; former judge of the Administrative Tribunal of the ILO; Alternate Chairman of the Staff Committee of Appeals, African Development Bank; former Vice-Chairman of the United Nations International Law Commission.

Mr. Miguel RODRIGUEZ PIÑERO Y PRAVO FERRER (Spain),

Doctor of Law; President of the Second Section of the Council of State (Legal, Labour and Social Matters); Professor of Labour Law; Doctor *honoris causa* of the University of Ferrara (Italy); President Emeritus of the Constitutional Court; President of the Spanish Association of Labour Law and Social Security; member of the European Academy of Labour Law, the Ibero-American Academy of Labour Law and the Andalusian Academy of Social Sciences and the Environment; Director of the review *Relaciones laborales*; President of the SIGLO XXI Club; former President of the National Advisory Commission on Collective Agreements and President of the Andalucian Industrial Relations Council; former Dean of the Faculty of Law of the University of Seville; former Director of the University College of La Rábida.

Mr. Amadou SÔ (Senegal),

Magistrate; Judge of the Constitutional Court; former President of the Labour Tribunal of Dakar; former Director of the Judicial Services; former Court President at the Court of Appeal; former Secretary-General of the Supreme Court; former Section President at the Supreme Court; former Lecturer on labour law at the Administrative Training and Further Training Centre (CFPA) and the National School of Administration and Magistracy (ENAM).

Mr. Boon Chiang TAN (Singapore),

BBM, PPA, LLB (London), Dip. Arts; Barrister-at-Law and Solicitor, Singapore; former President of the Industrial Arbitration Court of Singapore; former member of the Court and Council of the University of Singapore; former Vice-President (Asia) of the International Society of Labour Law and Social Security.

Mr. Jean-Maurice VERDIER (France),

Professor Emeritus at the University of Paris X; Honorary President of the University of Paris X; Honorary Dean of the Faculty of Law and Economics; former Director of the Institute for Research on Enterprises and Industrial Relations of the University of Paris X (associate of the National Centre for Scientific Research); former Director of the Institute of Labour Social Sciences, University of Paris I; Vice-President of *Libre Justice*, the French section of the International Commission of Jurists; former Professor at the Faculties of Law and Economics at Tunis (1956-61) and Algiers (1965-68); former President and Honorary President of the International Society of Labour Law and Social Security; former President and Honorary President of the French Association of Labour Law and Social Security.

Mr. Budislav VUKAS (Croatia),

Professor of Public International Law at the University of Zagreb, Faculty of Law; member of the International Tribunal for the Law of the Sea; member of the Institute of International Law; member of the OSCE Court of Conciliation and Arbitration; member of the International Council of Environmental Law; member of the Commission on Environmental Law of the International Union for Conservation of Nature and Natural Resources; former member of the Permanent Court of Arbitration.

Mr. Toshio YAMAGUCHI (Japan),

Honorary Professor of Law at the University of Tokyo, Professor of Law at Kanagawa University; former Chairman of the Central Labour Relations Commission of Japan; former member of the Executive Committee of the International Society of Labour Law and Social Security; full member of the International Academy of Comparative Law.

5. The Committee elected Sir William DOUGLAS to the Chair and it elected Mr. E. RAZAFINDRALAMBO as Reporter of the Committee.

6. In pursuance of its terms of reference, as revised by the Governing Body at its 103rd Session (Geneva, 1947), the Committee was called upon to examine:

(i) the annual reports under article 22 of the Constitution on the measures taken by Members to give effect to the provisions of the Conventions to which they are parties, and the information furnished by Members concerning the results of inspections;

(ii) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;

(iii) information and reports on the measures taken by Members in accordance with article 35 of the Constitution.

7. The Committee, after an examination and evaluation of the above reports and information, drew up its present report, consisting essentially of the following three parts: Part One is the General Report in which the Committee reviews general questions concerning international labour standards and related instruments and their implementation. Part Two contains observations concerning particular countries on the application of ratified Conventions (see section I and paragraphs 181 to 211 below), on the application of Conventions in non-metropolitan territories (see section II and paragraphs 181 to 211 below), and on the obligation to submit instruments to the competent authorities (see section III and paragraphs 212 to 232 below). Part Three, which is published in a separate volume (Report III (Part 1B)) consists of a General Survey on the Migration for Employment Convention (No. 97) and Recommendation (No. 86) (Revised), 1949, and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the Migrant Workers Recommendation, 1975 (No. 151), on which governments were requested to submit reports under article 19 of the ILO Constitution.

8. In carrying out its task, which consists of indicating the extent to which the situation in each State appears to be in conformity with the Conventions and the obligations undertaken by that State by virtue of the ILO Constitution, the Committee has followed the principles of independence, objectivity and impartiality set forth in its previous reports. It has continued to apply the working methods recalled in its 1987 report. A spirit of mutual respect, cooperation and responsibility has consistently prevailed in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards, whose proceedings the Committee takes fully into consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in respect of specific matters concerning the way in which States fulfil their standards-related obligations.

9. In this context, the Committee again noted the participation of the Chairperson of its 68th Session as an observer in the general discussion of the Committee on the Application of Standards of the 86th Session of the International Labour Conference (June 1998). It noted the decision of the above-mentioned Committee again to request the Director-General to invite the Chairperson of the 69th Session of the Committee of

Experts on the Application of Conventions and Recommendations to attend as an observer the general discussion of the Committee on the Application of Standards of the 87th Session of the International Labour Conference (June 1999). The Committee accepted the invitation.

10. The Chairperson of the 69th Session of the Committee of Experts invited the Employer and Worker Vice-Chairpersons of the Committee on the Application of Standards of the 86th Session of the International Labour Conference to jointly pay a visit to this Committee at its present session. Both accepted this invitation. Unfortunately, for reasons beyond his control, at the last minute the Employer Vice-Chairperson was not able to come to Geneva.

II. General

Membership of the Organization

11. Since the Committee's last session, the number of member States of the ILO has remained unchanged at 174.

New standards adopted by the Conference in 1998 and the coming into force of Conventions

12. The Committee noted that at its 86th Session (June 1998) the International Labour Conference adopted the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189).

13. The Part-Time Work Convention, 1994 (No. 175), has been ratified by Cyprus and Mauritius, and entered into force on 28 February 1998. The Safety and Health in Mines Convention, 1995 (No. 176), has been ratified by Botswana and Spain, and entered into force on 5 June 1998. The Protocol of 1995 to the Labour Inspection Convention, 1947 (No. 81), has been ratified by Finland and Sweden, and entered into force on 9 June 1998.

Ratifications and denunciations

Ratifications

14. The list of ratifications by Convention and by country[1] indicates a total of 6,477 ratifications as at 31 December 1997. At the end of the Committee's session on 11 December 1998, 72 ratifications had been received from 41 countries, bringing the total to 6,549.

Denunciations accompanied by the ratification of a revising Convention

15. Since the Committee's last session, the Director-General has registered 23 denunciations accompanied by the ratification of a revising Convention.

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[1] International Labour Conference, 86th Session, Geneva, 1998, Report III (Part 2).

Albania ratified the Minimum Age Convention, 1973 (No. 138)

(denouncing the Minimum Age (Industry) Convention, 1919 (No. 5), the Minimum Age (Agriculture) Convention, 1921 (No. 10), the Minimum Age (Sea) Convention (Revised), 1936 (No. 58), the Minimum Age (Industry) Convention (Revised), 1937 (No. 59), and the Minimum Age (Fishermen) Convention, 1959 (No. 112))

Brazil ratified the Holidays with Pay Convention (Revised), 1970 (No. 132)

(denouncing the Holidays with Pay Convention, 1936 (No. 52) and the Holidays with Pay (Agriculture) Convention, 1952 (No. 101))

Brazil ratified the Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)

(denouncing the Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91))

Cyprus ratified the Minimum Age Convention, 1973 (No. 138)

(denouncing the Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15), and the Minimum Age (Sea) Convention (Revised), 1936 (No. 58))

Denmark ratified the Minimum Age Convention, 1973 (No. 138)

(denouncing the Minimum Age (Industry) Convention, 1919 (No. 5), the Minimum Age (Sea) Convention, 1920 (No.7), the Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15), the Minimum Age (Sea) Convention (Revised), 1936 (No. 58), and the Minimum Age (Fishermen) Convention, 1959 (No. 112))

Ecuador ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169)

(denouncing the Indigenous and Tribal Populations Convention, 1957 (No. 107))

Guyana ratified the Minimum Age Convention, 1973 (No. 138)

(denouncing the Minimum Age (Industry) Convention, 1919 (No. 5), the Minimum Age (Agriculture) Convention, 1921 (No. 10), the Minimum Age (Sea) Convention, 1920 (No. 7), and the Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15))

Hungary ratified the Holidays with Pay Convention (Revised), 1970 (No. 132)

(denouncing the Holidays with Pay Convention, 1936 (No. 52), and the Holidays with Pay (Agriculture) Convention, 1952 (No. 101))

Jordan ratified the Minimum Age Convention, 1973 (No. 138)

(denouncing the Minimum Age (Underground Work) Convention, 1965 (No. 123))

Netherlands ratified the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)

(denouncing the Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32))

Philippines ratified the Minimum Age Convention, 1973 (No. 138)

(denouncing the Minimum Age (Industry) Convention (Revised), 1937 (No. 59)

Slovakia ratified the Minimum Age Convention, 1973 (No. 138)

(denouncing the Minimum Age (Industry) Convention, 1919 (No. 5), and the Minimum Age (Agriculture) Convention, 1921 (No. 10))

Denunciations following the recommendation of the Governing Body

16. Denunciations not accompanied by the ratification of a revising Convention made in response to the recommendation regarding the policy of revision of standards made by the Governing Body were registered from **Belgium** for the Inspection of Emigrants Convention, 1926 (No. 21) and the Contracts of Employment (Indigenous

Workers) Convention, 1939 (No. 64), and from **Chile** for the Maternity Protection Convention, 1919 (No. 3).

Denunciations not accompanied by the ratification of a revising Convention

17. A denunciation not accompanied by the ratification of a revising Convention was registered from **Australia** for the Placing of Seamen Convention, 1920 (No. 9). The Government states that it had chosen not to ratify the revising Convention following a process of consultation and consideration in relation to reforms aimed at improving the international competitiveness of Australian shipping. These reforms were recommended to the Government by an advisory body, the Shipping Reform Group, comprising key maritime industry executives, which found that "the industry employment arrangements for rating seafarers were found to inhibit employment continuity for seafarers, increase training costs, prevent transfer of ratings between each ship operator's vessels, involve both inadequate selection arrangements and barriers to promotion for seafarers and impose on the industry additional administrative costs of the system. In addition, independent reports to the Government highlighted the adverse impact of the industry employment arrangements on occupational health and safety outcomes in the maritime industry. The introduction of company-based employment for all seafarers was seen by the industry as important in helping to reduce the current high incidence of work-related injury and disease. This results from the improved selection of seafarers to suit the physical demands of particular seagoing jobs and allowing specialized training to be provided to seafarers who have a full-time commitment to their employment with a particular ship operator".

18. The Government, therefore, decided to withdraw from further involvement in operating the particular public employment services for seafarers, which were part of the substantive requirements of ILO Convention No. 9, as from 1 March 1998.

19. A denunciation not accompanied by the ratification of a revising Convention was registered from **Luxembourg** for the Night Work (Bakeries) Convention, 1925 (No. 20). The Government states that "the measure is one of a number of initiatives aimed at encouraging the development of enterprise by removing obstacles to self-employment and in particular to the creation and running of small and medium-sized enterprises. In concrete terms, removing the prohibition of night work will allow bakeries to adapt to current technical and economic conditions and meet their customers' needs. The proposal to denounce Convention No. 20 and repeal the national statutes based on it prohibiting night work in bakeries was approved unanimously by the tripartite coordination committee, which includes representatives of all the national employers' associations and trade union organizations".

20. A denunciation not accompanied by the ratification of a revising Convention was registered from the **Netherlands** for the Underground Work (Women) Convention, 1935 (No. 45). The Government states that in its opinion "a categorical ban on women doing a specific type of work is not in accordance with the principle of equal opportunities for men and women to which we now adhere. In the Government's view, the Convention no longer accords with European regulations ... on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions. Unless women are pregnant, have recently given birth or are breastfeeding, the risks they face in working underground do not differ from those faced by men. The denunciation by the Netherlands of this Convention will not affect the specific protection afforded to women in relation to pregnancy and maternity, who can invoke the provisions of other regulations in this connection". The Government conducted consultations on the denunciation of the Convention with the organizations representing employers and workers.

21. A denunciation not accompanied by the ratification of a revising Convention was registered from **Zambia** for the Underground Work (Women) Convention, 1935 (No. 45). The Government states that in full consultation with and with the mutual consent of the most representative organizations of employers and workers, it took note of "the tremendous technological developments covering many fields including organization of work to the extent that work which was hazardous, arduous, or strenuous is no longer so. Under the circumstances, provisions of the said Convention providing protection to women because of the nature of work has become an instrument of discrimination against women. It has thus become inappropriate in these modern times to deny women the right to access to profession, career or employment of one's choice in the mines. Zambia thus progressively removed legislative measures, national policies and practices tending to inhibit women to exercise their full potential on an equal basis with men".

22. The Committee notes that several denunciations of the Underground Work (Women) Convention, 1935 (No. 45) have been registered for the 12-month denunciation period ending 30 May 1998.

23. As regards the question of the relationship between the prohibition of the employment of females on underground work in mines as laid down in this Convention, and equality of treatment, the Committee recalls that the Convention does not provide for the absolute prohibition of the employment of females in mines. On the contrary, the Convention authorizes females holding positions of management or females employed in health and welfare services, or who in the course of their studies spent a period of training in the underground parts of a mine, as well as any other work to be performed by females who may occasionally have to enter the underground parts of a mine for the purpose of non-manual occupation. Moreover, the Committee wishes to recall that under the provisions of Article 5, paragraph 1, of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), "special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination".

24. The Committee hopes that efforts will be undertaken by all member States, irrespective of the ratification or denunciation of the Underground Work (Women) Convention, 1935 (No. 45), with a view to improving the protection of safety and health in mines as well as the protection of male and female workers, taking due account of the relative instruments in this regard, in particular the Safety and Health in Mines Convention, 1995 (No. 176), and the Safety and Health in Mines Recommendation, 1995 (No. 183). The Committee trusts that any review of the prohibition of manual underground work for women will be undertaken within the framework of an improvement of the overall working conditions in mines.

Declarations

25. With regard to non-metropolitan territories, the **Netherlands** made a declaration on behalf of *Aruba* terminating the acceptance of the obligations of the Rural Workers' Organisations Convention, 1975 (No. 141).

Notifications

26. With regard to the application of international labour Conventions to the *Special Administrative Region of Hong Kong*, the Director-General has registered the following notifications made by **China** on the application, with modifications, of the Weekly Rest

(Industry) Convention, 1921 (No. 14), the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the Labour Administration Convention, 1978 (No. 150).

Constitutional and other procedures

27. The Committee had been informed of the decisions taken by the Governing Body in cases where the Governing Body had recourse to the constitutional procedures in respect of complaints, representations and other procedures.

A. Complaints submitted under article 26 of the ILO Constitution

Complaint against Myanmar

28. The Committee noted with interest the report of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), which completed its work on 2 July 1998. The report was sent to the Government of Myanmar on 27 July and was published on 20 August 1998. At its 273rd Session (November 1998) the Governing Body took note of the Commission's report and the Government's communication under article 29, paragraph 2, of the Constitution; it also asked the Director-General to present a progress report at its 274th Session (March 1999).

Complaint against Nigeria

29. The Committee notes that at its 271st Session (March 1998) the Governing Body had decided, in accordance with article 26(4) of the ILO Constitution, to refer the question of observance by Nigeria of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), to a commission of inquiry. The Committee takes note that, following developments in the situation, a direct contacts mission took place and the report of this mission was transmitted to the Governing Body. It also notes the decision of the Governing Body at its 273rd Session (November 1998) to transmit that report to the Committee of Experts for examination and to suspend the work of the Commission of Inquiry pending such examination and until such time as the Governing Body may decide otherwise.

Complaint against Colombia

30. The Committee notes that the International Labour Conference at its 86th Session (June 1998), in accordance with article 26 of the ILO Constitution, received a complaint which had been filed by 26 trade union members alleging non-observance by Colombia of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Committee was informed that the Governing Body, at its 273rd Session (November 1998), instructed the Director-General to request the Government of Colombia to communicate its observations on the complaint. It notes that the Governing Body will decide at its 274th Session (March 1999), in the light of information provided by the Government and the recommendations of the Committee of Freedom of Association regarding the complaint and the cases which are still pending, whether they should be referred as a whole to a commission of inquiry.

B. Representations submitted under article 24 of the ILO Constitution

Representation concerning Bolivia

31. At its 272nd Session (June 1998), the Governing Body decided that the representation made by the Bolivian Central of Workers (COB) alleging non-observance by Bolivia of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), was receivable. A tripartite committee was set up to examine the representation.

Representation concerning Bosnia and Herzegovina

32. At its 273rd Session (November 1998), the Governing Body decided that the representation made by the Union of Autonomous Trade Unions of Bosnia and Herzegovina alleging non-observance by Bosnia and Herzegovina of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), was receivable. A tripartite committee was set up to examine the representation.

Representations concerning Chile

33. At its 271st Session (March 1998), the Governing Body decided that the representation made by the College of Teachers of Chile A.G. alleging the non-observance by Chile of the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35), and of the Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37), was receivable. A tripartite committee was set up to examine the representation.

34. At its 273rd Session (November 1998), the Governing Body decided that the representation made by a number of national trade unions of workers of the Private Sector Pension Funds (AFP) alleging non-observance by Chile of the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35), the Old-Age Insurance (Agriculture) Convention, 1933 (No. 36), the Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37), and the Invalidity Insurance (Agriculture) Convention, 1933 (No. 38), was receivable. A tripartite committee was set up to examine the representation.

Representation concerning Colombia

35. The Office received the representation made by the Latin American Central of Workers (CLAT) alleging non-observance by Colombia of the Protection of Wages Convention, 1949 (No. 95). This representation has been submitted to the Officers of the Governing Body for a decision on its receivability, but their decision is still pending.

Representation concerning Denmark

36. At its 272nd Session (June 1998), the Governing Body decided that the representation made by the Association of Salaried Employees in the Air Transport Sector and the Association of Cabin Crew at Maersk Air, alleging non-observance by Denmark of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), was receivable. The Governing Body referred this representation to the Committee on Freedom of Association.

Representation concerning Spain

37. At its 272nd Session (June 1998), the Governing Body adopted the report of the tripartite committee set up to examine the representation made by the General Labour Confederation of the Republic of Argentina alleging the non-observance by Spain of the Migration for Employment Convention (Revised), 1949 (No. 97), the Discrimination

(Employment and Occupation) Convention, 1958 (No. 111), and the Employment Policy Convention, 1964 (No. 122).

Representation concerning Ethiopia

38. At its 273rd Session (November 1998), the Governing Body decided that the representation made by the National Confederation of Eritrean Workers (NCEW) alleging non-observance by Ethiopia of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Termination of Employment Convention, 1982 (No. 158), was receivable. The Governing Body decided to set up a committee to examine the representation.

Representation concerning Hungary

39. At its 270th Session (November 1997) the Governing Body decided that the representation made by the National Federation of Workers' Council (NFWC) alleging the non-observance by Hungary of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Employment Policy Convention, 1964 (No. 122), was receivable. A tripartite committee was set up to examine the representation.

Representations concerning Mexico

40. At its 272nd Session (June 1998), the Governing Body adopted the report of the tripartite committee set up to examine the representation submitted by the Trade Union Delegation, D-III-57, section XI of the National Trade Union of Education Workers (SNTE), Radio Education, alleging the non-observance by Mexico of the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

41. At its 273rd Session (November 1998), the Governing Body decided that the representation made by Radical Trade Union of Metal and Associated Workers alleging non-observance by Mexico of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), was receivable. A tripartite committee was set up to examine the representation.

Representation concerning Peru

42. At its 273rd Session (November 1998), the Governing Body adopted the report of the tripartite committee set up to examine the representation made by the *Confederación General de Trabajadores del Perú* (CGTP) alleging non-observance by Peru of the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Representation concerning Turkey

43. At its 270th Session (November 1997), the Governing Body took note of an interim report on the representation made by the Confederation of Trade Unions of Turkey (TÜRK-IŞ) alleging non-observance by Turkey of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94).

Representation concerning Venezuela

44. At its 273rd Session (November 1998), the Governing Body adopted the report of the tripartite committee set up to examine the representation made by the Latin American Central of Workers (CLAT) and the Latin American Federation of Commerce (FETRALCOS), alleging the non-observance by Venezuela of the Employment Policy Convention, 1964 (No. 122).

Representation concerning the Socialist Federal Republic of Yugoslavia

45. There has been no change in the situation over the past year. The Committee noted previously that the tripartite committee established to examine the representation submitted by the International Confederation of Free Trade Unions (ICFTU), alleging non-observance by the Socialist Federal Republic of Yugoslavia of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), submitted its report to the 253rd (May-June 1992) Session of the Governing Body. The Governing Body has suspended examination of this representation, pending a possible stance by the United Nations which would make it possible for some defendant to be identified for the purposes of the application of article 7 of the Standing Orders governing the procedure for the examination of representations submitted under articles 24 and 25 of the ILO Constitution.

* * *

46. The Committee noted the discussion at the 273rd Session of the Governing Body (November 1998) on the revision of the procedure for the examination of representations submitted under article 24 of the ILO Constitution. The discussion centred on three issues: the consequences of representations being automatically referred to a tripartite committee if they were found receivable, the question of the suspensive effect of such representations under article 24 of the Constitution on the regular supervisory machinery provided for under article 22, as well as the need to maintain the rules providing for the private character of the meetings of the Governing Body at which a representation was considered and for the confidential nature of the reports submitted by tripartite committees set up to examine article 24 representations. The preliminary views which were expressed on the issues will be taken into account in the preparation of a subsequent paper to be presented for discussion by the Governing Body next year.

C. Special procedures concerning freedom of association

47. At each of its last meetings (March and June 1998), the Committee on Freedom of Association had before it an average of some 65 cases concerning nearly 40 countries from all parts of the world, for which it presented interim or final conclusions, or for which the examination had been adjourned pending the arrival of information from governments (309th, 310th, 311th and 312th Reports). Many of these cases have been before the Committee on several occasions. Moreover, since the last meeting of the Committee of Experts, some 50 new cases had been submitted to the Committee. Missions concerning cases pending before the Committee on Freedom of Association visited Djibouti, the Republic of Korea, Nigeria and Indonesia.

48. The Committee on Freedom of Association drew the attention of the Committee of Experts to the legislative aspects of the following cases: 1773 (Indonesia), 1843 (Sudan), 1887 (Argentina), 1906 (Peru), 1912 (United Kingdom/ Isle of Man), 1928 (Canada/Manitoba), 1931 (Panama), 1942 (China/Special Administrative Region of Hong Kong) and 1943 (Canada/Ontario).

Functions in regard to other international instruments of universal and regional character

A. United Nations treaties concerning human rights

49. The Office regularly sends written reports and submits oral information, in accordance with existing arrangements, to the various bodies responsible for the application of United Nations Conventions that are relevant to the ILO's mandate. These bodies constitute the supervisory machinery established by the United Nations to examine reports which governments are required to submit at regular intervals on each of the United Nations instruments that they have ratified. Since the Committee's last meeting, the following activities have been undertaken:

— *International Covenant on Economic, Social and Cultural Rights*: the Office took part actively in the 18th (April-May 1998) and 19th (November-December 1998) Sessions of the Committee on Economic, Social and Cultural Rights, presenting reports on five countries at each session;

— *International Covenant on Civil and Political Rights*: the Office took part actively and reports were presented on five countries for the 62nd (March-April 1998), on six countries for the 63rd (July 1998), and on six countries for the 64th (October-November 1998) Sessions of the Human Rights Committee;

— *Convention on the Elimination of All Forms of Discrimination against Women*: a report on eight countries was submitted for the 18th (January-February 1998) Session of the Committee on the Elimination of Discrimination against Women;

— *International Convention on the Elimination of All Forms of Racial Discrimination*: a report on 14 countries was submitted to the 53rd (August 1998) Session of the Committee on the Elimination of Racial Discrimination;

— *United Nations Convention on the Rights of the Child*: the Office took part actively in the 17th (January 1998), 18th (May-June 1998), and 19th (September-October 1998) Sessions of the Committee on the Rights of the Child, providing information on States under consideration at its corresponding pre-sessional working groups. The United Nations Committee invited States which have not ratified the Minimum Age Convention, 1973 (No. 138) to do so. In addition, the Committee invited States which it had found to be experiencing difficulties in areas falling within the ILO's competence to request the assistance of the Office;

— The Office was represented at the 9th (February 1998) *Meeting of persons chairing the human rights treaty bodies* to discuss closer cooperation between the UN treaty bodies and the ILO and, in particular, how to make better use of the information provided in the ILO reports.

B. European Code of Social Security and its Protocol

50. In accordance with the supervisory procedure established under Article 74(4) of the Code, and the arrangements made between the ILO and the Council of Europe, the Committee of Experts examined 17 reports on the application of the European Code of Social Security and, as appropriate, its Protocol. It noted that the States parties to the Code and the Protocol continue in large measure to apply them. At the sitting in which the Committee examined the reports on the European Code of Social Security and its Protocol, the Council of Europe was represented by Ms. Ochoa-Llidó, Chief of the Social Security Unit. The conclusions of the Committee regarding these reports will be sent to the Council of Europe.

51. In addition, a representative of the ILO took part, as technical adviser, in the meeting of the Committee of Experts on Standard-Setting Instruments in the field of Social Security, held in Strasbourg (France) in May 1998, to examine the application of these instruments on the basis of the conclusions of this Committee. As in previous years, this Committee, which is now a competent body within the Council of Europe, endorsed the conclusions of the Committee of Experts.

52. Finally, the Committee was informed that the Netherlands had withdrawn their denunciation of Part VI (Employment injury benefit) of the Code as amended by the Protocol, with effect from 11 March 1998.

C. European Social Charter and Additional Protocol

53. In the context of its collaboration with the Council of Europe, representatives of the ILO participated in the course of 1998, in an advisory capacity, in accordance with article 26 of the European Social Charter, in several sessions of the Committee of Independent Experts responsible for supervising the application of the Charter.

54. Furthermore, since the Committee's last meeting, Slovakia has ratified the European Social Charter; Sweden has ratified the European Social Charter (Revised); Greece and Slovakia have ratified the Additional Protocol to the European Social Charter; Slovakia has ratified the Protocol amending the European Social Charter; Finland, Greece, Portugal and Sweden have ratified the Additional Protocol to the European Social Charter providing for a system of collective complaints, which thus came into force on 1 July 1998.

Collaboration with other international organizations

Cooperation in the field of standards with the United Nations and the specialized agencies

55. In the context of the collaboration established with other international organizations on questions concerning the supervision of the application of universal instruments relating to subjects of common interest, copies of the reports received under article 22 of the Constitution were forwarded to the United Nations, specialized agencies, and intergovernmental organizations with which the ILO has entered into special arrangements for this purpose.

56. Thus, in accordance with established practice, copies of the reports received on the Indigenous and Tribal Populations Convention, 1957 (No. 107), were forwarded for comment to the United Nations, the United Nations Food and Agriculture Organization (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO); copies of these reports were also sent to the Inter-American Indian Institute of the Organization of American States and to the United Nations Centre for Human Rights. Copies of reports on the Radiation Protection Convention, 1960 (No. 115), were transmitted to the International Atomic Energy Agency (IAEA). Copies of reports on the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), were sent to FAO, UNESCO and the United Nations. Copies of reports on the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), were transmitted to the International Maritime Organization (IMO). Copies of reports on the Rural Workers' Organisations Convention, 1975 (No. 141), were forwarded to FAO and the United Nations. Copies of reports on the Human Resources Development Convention, 1975 (No. 142), were sent to UNESCO. Copies of reports on the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), were forwarded to IMO. Copies of reports on the Nursing Personnel Convention, 1977 (No. 149), were transmitted to WHO.

57. Representatives of these organizations were also invited to attend the sittings of the Committee of Experts in which the Conventions in question were discussed.

Matters relating to human rights

50th anniversary of the Universal Declaration of Human Rights

58. The year 1998 has been an extremely important one in human rights for the United Nations system and for the ILO in particular. For the United Nations system as a whole, the 50th anniversary of the adoption of the Universal Declaration of Human Rights has provided the occasion for reflection, celebration and re-examination of activities. The Office of the High Commissioner for Human Rights has carried out a number of events during the year and celebrations culminated on 10 December 1998 with events in both New York and Geneva. The Committee notes that several of the events that took place in the course of the year — in particular the adoption of the ILO Declaration of Fundamental Principles and Rights at Work — relate directly to this anniversary year. It notes also that the International Labour Standards Department issued a publication entitled "The Universal Declaration of Human Rights and ILO Standards" for the occasion, as well as a special issue of the *International Labour Review* entitled "Labour Rights, Human Rights", and encourages the Office to continue to make its work on human rights better known.

Declaration of Fundamental Principles and Rights at Work and its Follow-up

59. The Committee notes with interest the adoption of this Declaration by the International Labour Conference at its 86th Session (June 1998), and the discussions which have taken place in the Governing Body on its follow-up. As it noted in its last report (paragraph 79), the Committee "has always welcomed any measures that would strengthen the ILO's ability to promote and protect the fundamental human rights which lie within its mandate, and to help member States to move towards the ratification of the ILO's Conventions on these subjects". It notes that this Declaration and the measures to be taken to give effect to it, will increase the ILO's ability to promote the principles underlying the core Conventions when these instruments have not yet been ratified; and that they provide for a more systematic examination of the needs for and delivery of ILO technical assistance on the matters covered by it. The Committee looks forward to the additional opportunities the operation of the Declaration will give for the effective implementation of fundamental ILO standards, and the principles underlying them. The Committee notes that the follow-up mechanism is not intended to be a substitute for the established supervisory mechanisms nor will it impede their functioning. The Committee notes the need for care to be exercised in this regard and further that action is required to ensure that a consistent and coherent approach with the ILO's established standards and supervisory mechanisms is maintained in practice.

Other human rights issues

60. The Committee will recall that the Governing Body decided, at its March-April 1995 session, to collect information on the ratification situation of the seven ILO Conventions dealing with fundamental human rights (Conventions Nos. 29 and 105, 87 and 98, 100 and 111, and 138) and, at its subsequent sessions, examined reports collating the replies of member States to the Director-General's letter calling for their universal ratification. The Governing Body has also examined reports of the Office's assistance to the member States for the ratification and application of these instruments. The campaign has been a great success, with 100 new ratifications or confirmations of ratifications previously applicable. The campaign continues, and the Office has been notified that a number of other ratifications are likely in the near future. The campaign is expected to be incorporated into the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work.

61. The ILO was asked to contribute, along with other organizations which make up the United Nations system, to a review of the progress accomplished since the World Conference on Human Rights (Vienna, 1993), for the United Nations Commission on Human Rights, the Economic and Social Council and the General Assembly in 1998. This was prepared in cooperation with the United Nations Office of the High Commissioner for Human Rights, and the ILO's report has been communicated to these bodies.

62. In the context of strengthening its technical advisory services on human rights, the Office has maintained collaboration with the United Nations' work through the Office of the High Commissioner for Human Rights. The Office has responded with written replies to the numerous requests for information received from the High Commissioner for Human Rights. It has also — through its International Training Centre in Turin — taken part in UN workshops on international human rights instruments reporting and has participated in joint briefing sessions with other United Nations agencies for country or thematic rapporteurs.

63. The Office took part actively in the 54th (March-April 1998) Session of the United Nations Commission on Human Rights, and the 50th (August 1998) Session of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, as well as in several of their subsidiary organs which meet throughout the year, providing written and oral information on relevant ILO standards, procedures and activities.

64. The Committee notes with interest that following a briefing session held in 1997 on the ILO's human rights work, the Office intends to hold another session in February 1999, immediately before the session of the United Nations Commission on Human Rights.

65. Following the General Assembly's proclamation of 1994-2004 as the International Decade of the World's Indigenous People, the Office has contributed to the Decade by organizing its own events and by collaborating with the Office of the High Commissioner for Human Rights. The Office is providing technical support to a Danish-funded project to promote the rights of indigenous and tribal peoples within the framework of relevant ILO standards, in particular Convention No. 169. The ILO is also continuing its work on the indigenous segment of the Guatemalan Peace Plan, signed in Oslo in 1994.

Operational activities and the supervision of international labour standards

66. The Committee has followed with particular interest recent discussions in the International Labour Conference and the Governing Body relating to the place of international labour standards in the Organization. This question concerns not only the question of the Declaration of Fundamental Principles and Rights at Work and its Follow-up, but moreover the role of ILO standards and principles in relation to the execution of the Organization's mandate as a whole. It is relevant to the extremely important debates on the social dimension of globalization and technical cooperation, the follow-up to the Social Summit in Copenhagen in 1995, the developing relations with international financial institutions (the World Bank, the International Monetary Fund and various regional bodies).

67. The Committee's own terms of reference and traditions lead it to consider many aspects of the application of Conventions, including cases where the ILO's technical cooperation might be of help and where evidence is provided of difficulties attributable directly or indirectly to financial crisis or structural adjustment programmes. In this process, it has always endeavoured to bring out the importance of respect for international legal norms at the national level — both because of the concrete obligations on member States under the ILO Constitution (in particular, articles 19, 22 and 35), and because of the inherent desirability, underlined by the Constitution, of strengthening the roles of law and tripartism as a strategy for achieving the social justice which is the Organization's goal.

68. The Committee takes this opportunity to recall the success of the supervisory procedures of which it is a part. The number of formal ***cases of progress*** (where the Committee has expressed ***satisfaction***) — now over 2,200 in the last 35 years — underrepresents the positive influence of the ILO's standards and the instances where dialogue among the supervisory bodies, governments and employers' and workers' organizations through the established procedures contributes to positive developments in terms of the Organization's own mandate.

69. The Committee continues to believe in the advantages of conceiving not only fundamental rights but also the whole range of labour standards in the form of judiciously worded instruments which lend themselves to due legal and consultative procedure at the national and international levels in order to promote and monitor their implementation. It commends the observations of all of the supervisory bodies of the ILO as reliable evaluations of the observance of the Organization's norms and as a basic point of reference both inside and outside. Such observations will have an impact ideally both on programming and implementation of the Organization's own operational activities through the active partnership policy and on the Organization's interaction with other international bodies — which, as the Committee has often seen, can have such a major effect on how the ILO's standards and indeed other aspects of human rights are respected in practice.

Questions concerning the application of Conventions

Application of the Forced Labour Convention, 1930 (No. 29)

70. The Committee refers to paragraphs 94 to 125 of its General Report of last year, in which it examined special reports requested under article 19 of the Constitution on both of the forced labour Conventions, Nos. 29 and 105. It has also carefully noted the discussion in the Conference Committee and in particular the views of the Employer and Worker members as to the question of prison labour: it is aware of the rehabilitational function of prisoners working, as well as the risk of exploitation.

71. In this light, and following the general comments in relation to *Article 2(2)(c) of Convention No. 29* in paragraphs 112 to 125 of its General Report of last year, the Committee has formulated a general observation intended to elicit information from all States bound by the Convention, which will supplement what has already been obtained or is asked for in individual comments. The Committee believes that the question of prisoners being, in the words of the Convention, "hired to or placed at the disposal of private individuals, companies or associations" merits fresh attention at the present time, and it intends to return to the matter when responses to its general observation are received.

72. More generally, the Committee notes that the last General Survey on the abolition of forced labour under article 19 of the Constitution was conducted in 1979. It considers that the implementation of these fundamental human rights Conventions is an important issue for the Organization, and one on which the Governing Body might wish to consider scheduling a new General Survey in the near future.

Application of the Seafarers' Identity Documents Convention, 1958 (No. 108)

73. The review of the governments' reports and the specimen identity documents has revealed in some cases a lack of awareness as to the purpose of the identity document and the rights and responsibilities which its issuance entails.

74. The Committee is aware of the tightening of immigration regulations in many regions and the particular problems this can create for seafarers, including those with identity documents issued pursuant to the Convention.

1. Purpose and specificity of the identity document

75. The document issued pursuant to this Convention, regardless of the form chosen (card or booklet), is a *seafarers' identity document*; it is not a passport. *Article 4(2) of the Convention* requires that the document contain a statement that it is a seafarers' identity document for the purpose of this Convention. Unlike a passport, which is a national document whose issuance (or refusal), use, possession and restitution are governed by national legislation, the seafarers' identity document is issued by a national authority pursuant to an international Convention. Consequently, it is the provisions of the Convention that govern all aspects of the identity document, unless otherwise provided in the Convention. The seafarers' identity document cannot be subjected to national legislation, in particular concerning, inter alia, passports, travel documents, and exit documents.

76. In exceptional cases where it is impracticable to issue the document to special classes of its seafarers, the Member may issue a passport indicating that its holder is a seafarer, "*in which case the passport shall have the same effect as a seafarers' identity document for the purpose of the Convention" [Article 2(1)]*. Thus, in exceptional circumstances a passport can become a seafarers' identity document, but the opposite is never possible.

77. The identity document is not a travel document *per se*, and any decision taken by the national authority to include space for notations concerning the purposes set forth in *Article 6(2)* — joining the ship, transit, repatriation — cannot alter the fact that the document remains a seafarers' identity document, and not a passport. Therefore, the Committee considers that any reference to the document as a "passport" should be deleted.

78. The primary purpose of the document is to facilitate temporary shore leave for the seafarer by means of a reciprocally recognized identity document. This is the minimum undertaking of States parties. When the document is used for temporary shore leave, as provided in *Article 6(1) of the Convention*, it serves as an identity card and a landing card, and is the sole identity document required for this purpose. In many cases ships are at sea for long periods and denial of shore leave would result in severe hardship and intolerable privation for the seafarer who must remain on board when the ship is in port because he lacks the travel documents normally required for foreign visitors. Shore leave, therefore, should be regarded as a special form of temporary entry in recognition of the unique status granted to seafarers, due to the special nature of their calling. It is exceptional both temporally (limited to the brief call of the vessel in port) and spatially (often limited to movement within the area of the port).

79. According to the terms of the Convention, denial of shore leave by local authorities can only take place on an individual basis and presumably for compelling reasons of public order *(Article 6(4))*. Moreover, any administrative obstacle to taking shore leave, or the imposition of fees or taxes of any kind as a condition for taking shore leave in a State party to the Convention, is a violation of *Article 6(1)*. The Committee further recalls that the purpose of the identity document only concerns conditions of entry as set forth in *Article 6* and readmission to the issuing territory as set forth in *Article 5*; it does not concern exit. Furthermore, although this is not a stated purpose of the Convention, the Committee is aware that in practice possession of the identity document is often a prerequisite to concluding a maritime labour contract.

2. *Form and content of the identity document*

80. The minimum particulars which the document must contain are set forth in *Article 4(3)* and can be placed on a card, as is the practice in some countries. The Committee recalls that the identity document was never intended to replace the national passport as an international travel document. It further recalls that, throughout the preparatory works, the document is referred to as a "seafarer's national identity card". The initial requirement of numbered pages (or pages at all) and space for additional entries was ultimately rejected. Notations for purposes other than temporary shore leave (i.e., entry stamps, visas) depend on whether the issuing authority has provided space for such entries *(Article 6(2))*. For these reasons, the document is not *required* to be but *may* be a travel document, according to the form chosen by the issuing authority.

81. In recalling the purpose of the identity document and requirements as to its form, the Committee considers that placing entry stamps or visas in the document and its use for immigration admission or as a travel document to cross international borders are separate and subsidiary questions.

3. *Entitlement to the identity document*

82. The State party to the Convention is required to issue the identity document to its nationals who are seafarers, regardless of the flag of the ship they sign on. This brings to the fore the status of the citizen as seafarer, and thus entitlement to the identity document.

83. In *Article 1(1)* the term seafarer is used in a broad and almost generic context to mean generally the personnel on board when the ship is at sea. This vision of the seafarer is both logical and in keeping with the essential *purpose* of the Convention: to allow the seafarer to take shore leave. Therefore, the concept of seafarer as set forth in paragraph 1 of the Article is to be understood in terms of a functional analysis, and as a general rule to which there may be exceptions, members of the crew are seafarers.

84. The status as a seafarer is not affected by periods of unemployment; rather it is in the nature of the calling of the seafarer to be unemployed between maritime engagements. *Article 2(2)* authorizes but does not require the authority to issue the identity document to a seafarer registered at an employment office. Thus a seafarer to whom an identity document has been issued, continues to retain the document during periods of unemployment.

85. The Convention allows but does not require a State party to issue identity documents to foreign seafarers.

4. Issuance and possession of the identity document

86. As provided in *Article 2(1)*, seafarers who are nationals shall apply in their personal capacity for the identity document. In this regard, the Committee observes with concern the practice in some States of requiring nationals to apply for the identity document through a national shipowner, thus effectively preventing seafarers from entering into a direct employment relationship with a foreign shipowner. In such situations local shipowners or maritime administrations recruit seafarers and then subcontract them to foreign shipowners.

87. Moreover, certain national legislative/regulatory texts provide for administrative refusal to issue identity documents or for their revocation — apparently without due process or recourse — to persons "legally banned" from working on vessels, or "for whom there exist reasons to be refused the issuance of a passport". In this regard, the Committee notes with concern that the refusal to issue documents denies the seafarer the right to work.

88. The terms of *Article 3* stipulate that the identity document is to remain in the seafarer's possession at all times. Practices involving surrender of the document to the shipowner, to the port State authorities during shore leave, or to the issuing authority between engagements, are contrary to the Convention. Issuance of the document constitutes recognition by the issuing authority that the holder is a seafarer; as such he is entitled to continuous possession of the identity document and to use it for the purposes set forth in *Articles 5 and 6*. For both foreigners and nationals, the issuance of a seafarers' identity document confers a right of return to the issuing territory for one year after expiry of the document *(Article 5)*.

5. Use of the identity document

89. The Committee emphasizes that the use of the identity document is distinct and must remain dissociated from the criteria of entitlement, the conditions of issuance, and the right of continuous possession. Whether the document can be used for purposes other than shore leave will depend on the form adopted by the issuing authority, following consultations with shipowners' and seafarers' organizations.

90. With regard to the purpose of the document and its use, the Committee considers that there are fundamental distinctions to be made between *entry, admission* and *travel*. Entry occurs once the ship is in the territorial waters of the State. When a merchant ship is in port, the crew has already entered the territory of the State, and is technically subject to its territorial jurisdiction. This principle is well established in international law although, in practice, as regards most situations on-board ship which do not directly affect the port State, it will refrain from exercising its jurisdiction over the vessel. Therefore, shore leave is more a conventional recognition of the principle of jurisdiction, according to which the seafarer is temporarily present in the territory, than a form of immigration admission. It is for this reason that the identity document need not have space for entry stamps or visas. The document in its essence is not intended for "admission" or "international travel", but only for identification of the seafarer to facilitate temporary shore leave. However, when there is space for notations in the document, there is clearly an obligation for the State party to allow entry into *its* territory for the additional purposes stated in *Article 6(2)* (transit, transfer, repatriation).

Application of the Employment Policy Convention, 1964 (No. 122)

91. This year the Committee began its examination of reports on the application of this Convention for the period 1996-98. As in the past, it has been able to draw on the analyses done by the ILO's Employment and Training Department (whose Director addressed the Committee at its invitation) and the employment specialists of the multidisciplinary advisory teams. It has also, where possible and appropriate, used the information provided by the States parties to Convention No. 122 in their reports which were also due this year on closely related Conventions, such as the Unemployment Convention, 1919 (No. 2), the Employment Service Convention, 1948 (No. 88), and the Human Resources Development Convention, 1975 (No. 142).

92. The fruitful dialogue that took place this year in the Conference Committee demonstrates the attachment of the social partners to seeking more effective means of applying Convention No. 122. The Committee for its part will continue, in its individual comments, to contribute to the public debate on employment, both at national and international levels, duly taking into consideration the views expressed in the Conference Committee. In this respect, the Committee notes in particular the concern expressed in the Conference Committee with regard to the impact on employment of the crisis in East and South-East Asia, and the call made to the Committee of Experts to monitor closely the effects of that crisis on the application of the Convention and other standards. It also notes the interest shown by the Conference Committee in the changes in employment policies in the countries of the European Union in preparation for economic and monetary union.

93. The Committee recalls that the Convention is in force in several Asian countries directly affected by the rapid rise in unemployment, underemployment and poverty resulting from the financial crisis. It notes that the High-Level Meeting which took place in Bangkok in April 1998 at the invitation of the ILO identified in its recommendations certain priority areas for action to mitigate the social consequences of the crisis and to create conditions for lasting recovery, particularly by improving the capacity of governments to design and implement active employment policies through closer cooperation between Ministries of Labour and those responsible for economic matters, boosting investment in human resources development, and recognizing the importance of the role of public employment services in the redeployment of workers who lose their jobs. The Meeting also emphasized that it is essential to maintain or establish sufficient protection in relation to incomes and essential social services, and considered that this issue should be included in the dialogue with the international financial institutions. Lastly, the Meeting highlighted the need for extensive tripartite dialogue at the national level covering the full range of economic and social policy choices. The Committee observes that these recommendations are entirely consonant with the fundamental provisions of the Convention with regard to the integration of employment policy into a coordinated social and economic policy and the consultation of the representatives of those affected by the measures to be taken. The Committee considers that the implementation of these recommendations should encourage the full application of the Convention under particularly difficult circumstances. In examining the report of Thailand, the Committee noted the efforts made to coordinate the various measures taken to combat the rise in unemployment and mitigate the attendant social consequences. The Committee will not fail to continue paying close attention to the policies adopted by these countries to overcome the crisis.

94. The Committee cannot fail to be aware of the consequences on the application of the Convention of the progress achieved by the Member States of the European Union towards the achievement of their project of economic and monetary union; in particular, it cannot fail to be aware of the consequences for employment policy of the transfer in some of those countries of control over monetary policy to a central independent European bank, or of the strict limits which they have set themselves in the area of budget policy. The Committee notes that the extraordinary European Council on Employment, which was held in Luxembourg in November 1997, emphasized the need for a coordinated macroeconomic policy and for systematic mobilization of Community policies to promote employment. The Committee also notes the adoption, through the Council resolution of 15 December 1997, of the "Employment guidelines" to be incorporated into the "national employment action plans" of each Member State. The Committee notes with interest the initial assessments of the application of these national plans which a number of governments have attached to their reports on the application of the Convention.

95. The Committee this year also examined several reports from countries in Latin America who have reported overall improvements in economic indicators, as well as persistent difficulties in improving the employment situation, especially in the formal sector. As in other developing regions, the informal sector is a major source of employment, especially for the most vulnerable population groups, such as young people, workers made redundant as a result of public sector restructuring and indigenous peoples. The Committee will continue to monitor closely the manner in which representatives of the informal sector are involved in the formulation and implementation of employment policy with the aim of seeking, through the process of consultation provided for in Article 3 of the Convention, socially acceptable solutions to the problems associated with the existence of a large informal sector.

96. The Committee has long observed that many reports describe measures aimed at encouraging job creation or facilitating the integration of informal employment into the formal sector by promoting small and medium-sized enterprises. It is therefore bound to welcome the adoption by the International Labour Conference of the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189). In emphasizing the indisputable role of private initiative in the creation of jobs and the need for the public authorities to maintain a climate that is conducive to the development and growth of enterprises, which very often make the most significant contribution to the promotion of employment, the Conference has made a valuable addition to the existing employment policy instruments. The Committee trusts that member States will take account of this Recommendation and include appropriate measures in their employment promotion policies.

97. The Committee notes with interest the *World Employment Report, 1998-99* presented to it by its chief editor. The report is the third in the series, and this year considers the crucial role of training for the employability of workers in the context of globalization. The Committee notes that the technical analyses contained in the report, especially those dealing with the training strategies most likely to promote productive employment for the most vulnerable categories of the active population, confirm the importance of giving full effect to all the international labour standards relating to employment and training. The Committee recognizes the most useful contribution that the technical assistance of the ILO makes to member States in this regard, in particular the activities undertaken within the framework of the programme "More and Better Jobs for Women". The Committee sees this as further confirmation of its own conviction that full, productive and freely chosen employment is as essential to economic growth as it is to social justice.

Application of the Indigenous and Tribal Peoples Convention, 1989 (No. 169)

98. Since it came into force on 5 September 1991, 13 ratifications of this important Convention have been registered. During 1998 there have been three ratifications, by Ecuador, Fiji and the Netherlands, and others are expected in the near future.

99. Convention No. 169 is the most comprehensive instrument of international law for the protection in law and in practice of the right of indigenous and tribal peoples to preserve their own laws and customs within the national societies in which they live. They have the right under the Convention to decide on the orientation and conduct of their economic development, and the right to the ownership and possession of their lands; to strengthen their social organization and their educational and health programmes as well as communication with the national society; and to guarantee adequate political participation taking into account their own legal personality.

100. As the Committee has pointed out in its comments on specific situations in different countries, this Convention — like other ILO instruments — establishes minimum rights which must be respected and put into practice by the States which ratify it, with a view to the protection of the 300 million members of indigenous and tribal peoples acknowledged to exist around the world. The application of the Convention is extremely complex and may have a profound impact which may go even to the heart of the constitutional order of ratifying States. Its ratification may imply the adoption of new national standards, or the adaptation of existing standards to define under the Convention a new relation between governments and national societies with indigenous and tribal peoples. One of the fundamental precepts of this Convention is that a relationship of respect should be established between indigenous and tribal peoples and the States in which they live, a concept which should not be confused with autonomy or political and territorial independence from the nation State.

101. It is important to note that the Convention has also had a great influence in many countries even before its ratification. For example, it served as a point of reference for the conclusion of a peace agreement and the signing of a specific accord on the dignity and rights of the indigenous peoples of Guatemala. It has also helped to orient, or to serve as a point of reference, for discussions on the situation of indigenous and tribal peoples in other countries. Finally, the Convention has also had a significant impact on other instruments of international law and in other international organizations, in particular in the United Nations Commission on Human Rights' discussion of a possible draft declaration of indigenous rights and, in the Americas, in the discussion of a new instrument on indigenous rights by the Inter-American Institute of Human Rights of the Organization of American States.

102. Another important point is that the Convention has served as guidance for a number of decisions of several supreme courts in the Americas. This has illustrated the capacity of the Convention to influence the positive law of these countries and to help modify the relations of power in the political dialogue between the indigenous and tribal peoples and national governments. It may be noted in this respect that since 1996, four representations under article 24 of the ILO Constitution have been submitted alleging failure to observe the provisions of the Convention in several countries. This demonstrates an increasing tendency for the Convention to be a valuable instrument for the protection of the rights of these vulnerable peoples.

Application of Conventions on child labour

103. The Committee notes that, at the International Labour Conference in June 1998, a first discussion took place with a view to the adoption of new instruments concerning the prohibition and immediate elimination of the worst forms of child labour. It considers that the Global March against Child Labour, which arrived at the Conference on its first day, was an indisputable demonstration of the increasing international awareness of the child labour problem and high expectations of the ILO in tackling it.

104. The Committee notes from the first discussion on the new instruments on the worst forms of child labour that the intention of the ILO constituents is not to revise or replace the existing Conventions on the subject, but to complement them by focusing on the immediate elimination of the worst forms of child labour as a priority. Consequently, there is no need to suspend or slow down any ongoing efforts to ratify or apply existing instruments on child labour: on the contrary, improvements in this respect undoubtedly have a positive impact on the scourge of child labour as a whole.

105. In examining the application of the Conventions on minimum age for employment or work by individual ratifying States, the Committee has been attaching importance to their application in practice, even where national laws and regulations ensure legislative conformity with the provisions of the Conventions. However, the Committee has noted that a number of governments indicate in their reports that no contravention of the provisions of minimum age has been reported in the undertakings covered by the Convention, while information from other sources would point to the existence of child labour in the country in question. Governments' attention is drawn to the fact that the minimum age Conventions of the ILO apply not only to the waged employment of children under a formal contract in the organized sector, but also to any other economic activity, including self-employment, within the respective scope of the Conventions subject only to the specific exceptions permitted.

106. The Committee understands the difficulty in ensuring the application of the Conventions in this wide perspective, since a mere stipulation of minimum age for employment in the labour legislation does not suffice. That is why the Committee highly appreciates information on a wide range of practical measures taken, including for the development and extension of basic education, given their importance in ensuring the practical application of any of the minimum age Conventions. Recalling that one of the main demands of the Global March was "education instead of exploitation", the Committee would draw the attention of the member States and the social partners to the significance of the provision of education in the fight against child labour. It is convinced that the existing ILO standards concerning child labour and the supervisory mechanism, if utilized to the maximum, can also contribute a driving force in this direction.

107. Recalling its previous concern at the lack of accurate and reliable information on the actual situation of child labour, which has not yet been eradicated, the Committee again urges on the tripartite constituents of the ILO their increased involvement in overseeing the application of Conventions relevant to child labour, and in particular those concerning minimum age. It also urges the governments to ensure that labour inspection is carried out efficiently and effectively so as to detect and eradicate child labour. The Committee renews its hope that the supervisory activities relating to international labour standards regarding child labour will contribute further to national and international endeavours to eradicate child labour effectively.

Application of Conventions in export processing zones and enterprises

108. In its last report, the Committee had noted the work undertaken by the Special Action Programme created to consider labour and social issues relating to export processing zones. It looked forward to learning of the findings and conclusions of the Action Programme, in particular so far as the clarification and guarantee of the implementation of ratified Conventions in the zones are concerned.

109. The Committee notes with interest the report prepared by the Action Programme on *Labour and social issues relating to export processing zones*, as well as the report on the deliberations of the Tripartite Meeting of Export Processing Zones — Operating Countries held in Geneva from 28 September to 2 October 1998 and its conclusions concerning priorities and guidelines for improving social and labour conditions in EPZs. It further notes the section on labour standards in the conclusions to this meeting which reaffirms the importance of respect for both international and national labour standards within EPZs and proposes strengthened labour inspectorates, information dissemination and awareness-raising programmes to ensure better compliance of these standards. Emphasis was also placed on the importance of tripartite consultations and dialogue at all levels. The meeting called upon the ILO to develop advisory services and technical assistance projects to assist EPZ-operating countries in improving labour and social conditions in EPZs and to provide all possible assistance to these countries when difficulties are encountered in fully respecting the fundamental rights set forth in the Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998.

110. The Committee welcomes the support given to the implementation of international labour standards in EPZs through the work undertaken by the Action Programme. It notes with particular interest from the report on *Labour and social issues relating to export processing zones* that very few countries continue to openly and officially exclude zones from the national labour legislation. There appears to remain, however, an important disparity between the *de jure* and the de facto application of labour standards in EPZs. For example, where the right to organize and to bargain collectively have the force of law in the EPZs of certain countries, many workers' organizations complained of being denied access to zones by security personnel and of other important obstacles to their ability to organize EPZ workers. Thus, the conclusions of the tripartite meeting emphasized the importance of improving labour-management relations and promoting collective bargaining machinery in EPZs. The Committee draws the attention of those governments which have ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), to the importance of ensuring both a de facto and a *de jure* application of these Conventions in EPZs.

111. The tripartite meeting also took particular note of the high proportion of women being employed in EPZs and the frequent absence of sufficient measures to address adequately their needs as workers. In light of this fact, guidelines were drafted by the meeting with a view to ensuring equality in opportunity and employment, to providing adequate maternity protection and to facilitating the combination of work with family responsibilities. The Committee wishes to draw special attention to the important role which can be played in this regard by the standards set out in the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Workers with Family Responsibilities Convention, 1981 (No. 156). It encourages those governments of export processing zones-operating countries which have ratified these Conventions to make particular efforts to ensure their full application within the zones. The Committee would, moreover, invite those countries which have not yet ratified these Conventions to give serious consideration to doing so.

112. The Committee has taken careful note of the views expressed in the Conference Committee in respect of export processing zones generally and as concerns the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), within the context of a globalizing world economy. It continues to take into account particular information received from governments as to the application of individual Conventions in EPZs. It encourages the governments concerned to continue to supply details in this respect and would invite both employers' and workers' organizations to communicate any observations they might deem appropriate.

III. Freedom of association and collective bargaining

Special reports on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), from countries that have not ratified them

113. The Governing Body decided at its 264th Session (November 1995), in the context of its discussion of the strengthening of the ILO's supervisory machinery, that the special procedure under article 19 of the Constitution for the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), would be extended to all seven basic ILO human rights instruments.[2] This procedure was used last year for the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105). Accordingly, reports were requested this year from all the countries which had not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). This procedure is intended to allow an examination outside the context of the General Surveys also conducted under article 19 of the Constitution of the obstacles to ratification of these fundamental instruments, the prospects for their ratification, and the difficulties encountered in the absence of ratification.

114. This procedure has been carried out in conjunction with the campaign launched in May 1995 by the Director-General for the ratification of these seven fundamental Conventions and with the urgent appeal for ratification launched by the Committee in 1998 on the occasion of the 50th anniversary of Convention No. 87. As a result, the procedure is able to make use of the information obtained through these other initiatives. The procedure was to be carried out every year for each of the seven fundamental Conventions in turn; however, the Committee notes that this procedure will be replaced in the context of the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work adopted during the 86th Session of the International Labour

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[2] The Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Minimum Age Convention, 1973 (No. 138).

Conference. In this regard, the Committee expresses the hope that the follow-up mechanism provided for in the Declaration will facilitate the continuation of the positive results recorded in the past few years concerning the ratification of fundamental Conventions, and particularly the freedom of association Conventions.

Ratification of the freedom of association Conventions

115. Conventions Nos. 87 and 98, which are the fundamental freedom of association instruments, have both received a large number of ratifications. Nevertheless, a significant number of the ILO's member States have not ratified Convention No. 87 (about 30 per cent of member States) or Convention No. 98 (about 20 per cent of member States). To date, Convention No. 87 has received 122 ratifications, while Convention No. 98 has received 139. Of those numbers, 13 and 16 countries respectively have accepted the obligations ensuing from those instruments since the 1994 General Survey on freedom of association and collective bargaining, either because they have ratified the instruments or because they have confirmed obligations which applied to them before they became independent States. These countries are:

- *Convention No. 87*: Botswana, Chile,[3] Estonia, Grenada, Indonesia, Lithuania, Republic of Moldova, Mozambique, Namibia, South Africa, Sri Lanka, The former Yugoslav Republic of Macedonia, Turkmenistan and Zambia;
- *Convention No. 98*: Botswana, Burundi, Chile, Estonia, Georgia, Madagascar, Republic of Moldova, Mozambique, Namibia, Nepal, South Africa, Suriname, The former Yugoslav Republic of Macedonia, Turkmenistan, Uzbekistan, Zambia and Zimbabwe.

The Committee particularly welcomes the most recent ratification of Convention No. 87, by Indonesia on 9 June 1998, which will affect tens of millions of workers.

116. The progress that has been made in the number of ratifications of these two fundamental Conventions is a positive aspect, but the Committee is bound to regret the fact that 52 States that have been Members of the ILO for more than 20 years have still not ratified Convention No. 87 and/or Convention No. 98.[4] Furthermore, the Committee once again expresses its concern over the fact that an important number of the most populated countries have not yet ratified these fundamental Conventions, affecting approximately half of the workers and employers worldwide. In addition, the Committee notes that in most cases these countries represent international or at least regional economic powers. The Committee deplores that some of these countries do not mention any obstacles to ratification but yet do not indicate envisaging any steps towards ratification of these Conventions, which can only detract from the efforts to promote ratification in the rest of the world.

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[3] The Committee was informed that the Chilean Senate in November 1998 approved the ratification of Conventions Nos. 87 and 98, but that these ratifications had not yet been recorded.

[4] With regard to Convention No. 87, this is the case with 36 States that have been Members of the ILO for more than 20 years, namely: Afghanistan, Angola, Bahamas, Bahrain, Brazil, Cambodia, China, Democratic Republic of the Congo, El Salvador, Fiji, Guinea-Bissau, India, Islamic Republic of Iran, Iraq, Jordan, Kenya, Lao People's Democratic Republic, Lebanon, Libyan Arab Jamahiriya, Malaysia, Malawi, Mauritius, Morocco, Nepal, New Zealand, Papua New Guinea, Qatar, Saudi Arabia, Singapore, Somalia, Sudan, Thailand, Uganda, United Republic of Tanzania, United Arab Emirates, United States. With regard to Convention No. 98, 24 member States have not ratified, namely: Afghanistan, Bahrain, Cambodia, Canada, China, Congo, El Salvador, Equatorial Guinea, India, Islamic Republic of Iran, Kuwait, Lao People's Democratic Republic, Mauritania, Mexico, Myanmar, New Zealand, Qatar, Saudi Arabia, Seychelles, Somalia, Switzerland, Thailand, United Arab Emirates, United States.

Information available

117. Reports have been received from 25 of the 52 countries that have not ratified Convention No. 87 and from 19 of the 35 countries that have not ratified Convention No. 98 (see list in the appendix). Some information comes from the replies provided by governments in response to the ratification campaign. Thus, information is available on 44 countries in the case of Convention No. 87 and on 30 countries in the case of Convention No. 98. The Committee regrets that certain countries that have not ratified one or both of these instruments have not sent any report or information in any other form. These countries are: *Convention No. 87*: Afghanistan, Equatorial Guinea, Gambia, Libyan Arab Jamahiriya, Solomon Islands, Somalia, Uzbekistan; *Convention No. 98*: Afghanistan, Equatorial Guinea, Gambia, Solomon Islands.

118. The Committee notes that in most cases, the information provided by governments was quite detailed and gave a reasonably detailed picture of the state of national legislation and practice with regard to the areas covered by the Conventions and the application of the principles of freedom of association. Nevertheless, the Committee regrets that certain countries provide no information in their reports on their intentions regarding ratification, the difficulties that are preventing or delaying ratification, or the reasons for which they oppose ratification. The Committee recalls that the technical assistance of the ILO is always available, but that governments should indicate clearly the obstacles they face as well as their actual intentions with regard to ratification of these fundamental Conventions.

119. The Committee welcomes the fact that, by contrast with last year, certain employers' and workers' organizations have provided information on the reports submitted by governments under article 23, paragraph 2, of the Constitution. They include, workers' organizations in the following countries: Brazil, Republic of Korea, New Zealand, United States. Furthermore, the Committee notes that the International Confederation of Free Trade Unions (ICFTU) has sent comments on the following countries: Bahrain, Canada, China, Equatorial Guinea, Islamic Republic of Iran, Libyan Arab Jamahiriya, Myanmar, Oman, Qatar, Saudi Arabia, Sudan, Thailand, United Arab Emirates and Viet Nam. An employers' organization in Mauritius has also sent comments. The Committee recalls that, while it is for employers' and workers' organizations to judge whether or not it is appropriate to provide information, the Committee's task of examining the possible consequences of failure to ratify in the countries concerned is bound to be made easier when this information is provided.

120. Since the launch by the Director-General in 1995 of the campaign to promote ratification of the fundamental Conventions, the Committee has noted with interest that the ILO has carried out numerous promotional activities. These activities have included seminars to promote ratification of Convention No. 87 and/or Convention No. 98 in the following countries: Madagascar (1995), Zambia (1995), Zimbabwe (1995), Mauritius (1996), Democratic Republic of the Congo (formerly Zaire, 1996), Kenya (1997 and 1998), Uganda (1997 and 1998), United Republic of Tanzania (1997 and 1998), India (1998). Other seminars will be organized soon in Brazil and Morocco.

Ratification prospects

Ratifications in progress or considered

121. Certain governments have indicated that ratification is under way and may be expected soon: *Convention No. 87*: Angola (ratification under way); Cape Verde (ratification under way); Zimbabwe (recommendation to ratify submitted to Parliament); *Convention No. 98*: Congo (procedure for submission to the competent authorities is under way). Other governments have indicated that they see no obstacle to ratification and that the process should be initiated in the very near future or that recommendations to that effect will be made: *Convention No. 87*: Cambodia (recommendation submitted to the Prime Minister in March 1998); Kazakhstan (a draft agreement between the Government and employers' associations provides for ratification of the Convention and preparatory work on ratification has begun); Lao People's Democratic Republic (recommendation of the Labour Ministry submitted to the Government in January 1997); Malawi (ratification should get under way once tripartite consultations have been completed); Papua New Guinea (examination of ratification has started); *Convention No. 98*: Mauritania (a bill to ratify the Convention has been submitted to the Government and was to have been submitted to Parliament during its May-June 1997 session; there have to date been no further indications of any measures taken); Seychelles (the Convention will be ratified soon); Switzerland (the draft recommendation on ratification has been transmitted to the Federal Council which will decide whether or not to propose ratification to Parliament). Lastly, one Government (Fiji) has indicated that the recommendation to ratify Convention No. 87 should be adopted before the end of the year, while another Government (Bahamas), which in 1995 indicated its intention to ratify Convention No. 87 before 1997, has provided no further information on the measures that it has taken.

Obstacles to ratification mentioned by governments

122. The following countries have simply indicated that they are examining ratification, with no indication being given of any difficulties they may be encountering: *Convention No. 87*: Armenia, Democratic Republic of the Congo, Georgia, Oman, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Sudan, United Republic of Tanzania. With regard to Sudan, the ICFTU has supplied information according to which the 1997 Trade Unions Act provides for a single trade union system and allows the public authorities to interfere to a considerable degree in the internal affairs of trade unions and to dissolve them in an arbitrary way. *Convention No. 98*: Armenia, Myanmar. With regard to Myanmar, the ICFTU has sent comments to the effect that there is no legal framework in the country for protecting workers against acts of anti-union discrimination or for protecting the right to collective bargaining.

123. Certain governments have provided general indications that legislation needs to be brought into line with these Conventions before ratification, without giving more precise information: *Convention No. 87*: Islamic Republic of Iran, Jordan. With regard to the Islamic Republic of Iran, the ICFTU has provided information according to which independent trade unions are prohibited in the Islamic Republic of Iran. The Labour Code provides that workers can establish Islamic labour committees, but the rules of these committees are drawn up by the Ministry of the Interior. Furthermore, the ICFTU indicates that the Government can dismiss and detain strikers and use the police to end strikes. Following the comments made by the ICFTU, the Government indicated that these allegations were not substantiated and that the ICFTU was confusing trade unions with associations, and particularly Islamic associations. Furthermore, the Government indicated that independent trade unions do exist in Iran and that the right to strike is being exercised as it shows from the agreement reached following a collective labour dispute in an oil refinery in Teheran. *Convention No. 98*: Kuwait.

124. Several governments have mentioned more substantial problems in the way of ratification. These fall into several categories, which are described below.

Convention No. 87

Absence of any workers' trade union

125. The following governments have not referred to the existence of any workers' trade union in their respective countries: Oman, Qatar, Saudi Arabia, United Arab Emirates. They have also provided the following observations.

126. The Government of Saudi Arabia indicates that there is no national legislation or practice for applying the provisions of the Convention. Furthermore, the Government has expressed no views regarding possible future ratification. The ICFTU has supplied information according to which trade unions, strikes and collective bargaining are prohibited under penalty of imprisonment, or expulsion from the country in the case of foreign workers.

127. The Government of the United Arab Emirates has indicated that the technical committee set up to examine ratification has not recommended it. The ICFTU has supplied information according to which there are no trade unions in the country and the right to organize is not provided for by the law.

128. The Government of Qatar has drawn attention to problems connected with the country's demographic situation and with the fact that its labour force is concentrated in the public sector. The Government has not, however, provided any indication of its intentions with regard to possible ratification. The ICFTU has provided information according to which trade unions are prohibited in Qatar. While the law allows the establishment of joint consultative committees, wages are generally fixed unilaterally by the employers.

129. The Government of Oman has not provided any information. The ICFTU has provided information according to which there are no trade unions in Oman and strikes have been strictly prohibited since 1973.

Trade union monopoly and denial of the right to establish the organization of one's own choosing without previous authorization

130. The Government of Brazil has indicated among other things that one provision in the Brazilian Constitution creates difficulties with regard to the Convention, in that it prescribes a single trade union system at branch level. In this regard, the Government has submitted to the National Congress a draft constitutional amendment which could open the way to future ratification.

131. The Government of Lebanon has indicated the existence of numerous discrepancies between national legislation and the Convention, in particular the fact that trade unions are required to obtain prior authorization before being set up and the fact that legislation permits the administrative dissolution of a trade union. Ratification will not be possible until these provisions are amended. In this respect, the Committee reminds the Government that it can draw on the ILO's technical assistance with a view to ensuring that any future changes to legislation take account of the provisions of the Convention.

132. The Government of Viet Nam has indicated that its national legislation contains certain provisions that are incompatible with the Convention, in particular the fact that a trade union is required to obtain prior authorization from the competent authority before being set up. The Government indicates further that no amendment to the legislation is planned and ratification will be examined at the appropriate time. The ICFTU has provided information according to which any trade union must be affiliated to the central trade union which is itself affiliated to the sole political party in power.

Restrictions for certain categories of workers and sectors of activity

133. The Government of El Salvador has indicated that a number of provisions in its national legislation pose problems with regard to the Convention. It points out, firstly, that the Constitution stipulates that public servants do not have the right to organize. Furthermore, under the Constitution only El Salvadorian nationals may hold trade union office. Lastly, the Government draws attention to the case of the armed forces and police, which are covered by special texts. The Committee recalls that it has already drawn the Government's attention to the fact that, under the terms of Article 9 of the Convention, the extent to which the guarantees provided for in the Convention apply to the armed forces and the police is to be determined by national laws and regulations. Consequently, States ratifying the Convention may decide on the extent to which such persons shall enjoy the right to organize, if at all. The Government gives no indication of the measures it intends to take to improve the application of the Convention or of its position with regard to future ratification.

134. The Government of India has indicated that its national legislation is broadly in conformity with the provisions of the Convention. Nevertheless, one problem remains in the sense that legislation draws a distinction between public servants and other workers, and the former are defined in very broad terms and face numerous restrictions in respect of their right to organize and collective bargaining. However, these restrictions have been ruled to be constitutionally valid by the Supreme Court, which took into consideration the fact that public servants enjoy a high degree of job security and can avail themselves of special mechanisms for settling disputes. In addition, the Government explains that in response to a request for technical assistance from the ILO, a tripartite seminar aimed at eliminating obstacles to ratification took place in May 1998. Following this seminar, the Government indicated that it planned to take the necessary measures to eliminate the legislative obstacles preventing ratification.

135. The Government of Malaysia, referring to its earlier comments, indicates that the main difficulty preventing the ratification of the Convention is that it would allow the formation of general unions which might be led by persons having nothing to do with the activities or interests represented by the unions and pursuing political or even subversive aims. As regards the political activities of the trade union movement, the Committee recalls that when trade unions, in accordance with the law and practice of their respective countries and following a decision of their members, decide to establish relations with a political party or to undertake constitutional political action as a means toward the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social or economic functions. However, the Committee also recalls that it is possible to adopt provisions to promote democratic principles within trade unions or to ensure the proper conduct of the election process, with respect for members' rights, and that provisions of this kind do not involve any violation of the principles of freedom of association as long as they are not so detailed as to allow undue control by the authorities.

136. The Government of Morocco has indicated that national legislation stipulates that only Moroccan nationals may stand for trade union office and that certain public officials are excluded from the right to organize. However, the Government points out that, following the joint Declaration signed by the social partners in August 1996, the ratification process should begin very shortly. Noting that the Government has already raised the matter of nationality as a condition of eligibility for trade union office, the Committee once again points out that a formula which would allow a certain amount of flexibility would overcome this minor difficulty.

137. The Government of the Republic of Korea has indicated that its national legislation provides for restrictions on the right to organize of public officials and teachers, which prevents ratification of the Convention in the short term. However, the Government is examining an approach which would allow a gradual extension of these rights to the categories of workers in question, thereby assuring greater conformity with the provisions of the Convention. In this regard, the Committee recalls that the ILO can offer its technical assistance. The Federation of Korean Trade Unions (FKTU) has provided observations according to which the right to organize is not fully guaranteed to public sector workers and the list of essential services for which restrictions on the right to strike apply is defined very broadly.

138. The Government of Nepal has indicated that certain provisions of the Act concerning public servants are not in conformity with the principles set out in the Convention. However, the Government also indicates that it is about to begin consultations with the parties concerned with a view to eventual ratification. The Committee recalls in this regard that the ILO can offer technical assistance.

139. The Government of Thailand has indicated that a number of provisions in its national legislation create problems with regard to the Convention. Among other things, the Government has pointed out that public servants do not have the right to organize and only Thai nationals enjoy freedom of association. Amendments to bring legislation more into line with the Convention were submitted to Parliament in December 1996. The text in question was submitted to the Chamber of Representatives in January 1998 and adopted in September 1998. However, it has since been declared unconstitutional by the Constitutional Court. Furthermore, the ICFTU has provided information according to which the 1991 Act concerning industrial relations in public enterprises abolished all trade unions for civil servants.

The right to strike

140. The Government of Eritrea has indicated that certain restrictions on the right to strike are imposed by national legislation. The Government has also acknowledged that public officials and domestic staff are not covered by the legislation and therefore do not have the right to organize. However, the Government also points out that legislation in these areas is about to be reviewed.

141. The Government of New Zealand has indicated that, while in its view the labour relations legislation passed in 1991 is to a very large extent in conformity with the provisions of the Convention, it allows employees total freedom in deciding whether or not to join an association and which one. The Government also indicates that although the right to strike exists, there may be difficulties with regard to certain restrictions in this area, in particular the prohibition of strikes which a union might wish to declare to enforce the application of a collective agreement at a number of enterprises. The Government indicates that it does not plan to amend legislation for the time being. The New Zealand Employers' Federation (NZEF) has provided comments to the effect that the principles of freedom of association have been better respected since the adoption of the 1991 Act concerning employment agreements, because workers are able to choose freely whether or not to join an association. On the other hand, the New Zealand Council of Trade Unions (NZCTU) has expressed regret that no legislative amendment has been made to the 1991 Act. The NZCTU considers that the Government has not acted on the recommendations of the Committee on Freedom of Association concerning a complaint which it presented in 1993. Furthermore, the NZCTU has provided copies of recent New Zealand jurisprudence which in its view shows that the 1991 Act does not encourage or promote the principles of freedom of association. It also points out that the Act provides for certain restrictions on the right to strike.

Other information

142. The Government of China has indicated that it regards the provisions of national legislation in this area as being consistent with the fundamental principles of the Convention. It points out that the trade unions are mass organizations of the working class which must abide by the Constitution and the law and dedicate themselves to the unity of the country and the nation. The Government has indicated that, because of the particular historical and cultural circumstances of China, it prefers to adopt a gradual approach towards achieving greater conformity with the principles of freedom of association and eventual ratification of the Convention. The ICFTU has provided information according to which the 1992 Trade Unions Act prohibits the establishment of trade unions independent of the public authorities and the sole political party and provides for a single trade union system. This Act makes no mention of the right to strike which, moreover, is no longer recognized by the Constitution of 1982. Lastly, the ICFTU indicates that the 1995 Labour Code provides for serious restrictions to free collective bargaining.

143. The Government of the United States has indicated that under the terms of the Constitution, workers and employers have the right to set up organizations, without prior authorization or interference by the Government. The principal mechanism for the settlement of disputes lies in the obligation of both parties to bargain in good faith, with the option of assistance from the Federal Mediation and Conciliation Service. The Government indicates that, while there has been no recent in-depth tripartite analysis of the Convention, federal legislation appears by and large to be compatible with the Convention and that no further measures, including with regard to ratification, are planned. The draft report of the Government was examined by the Tripartite Advisory Panel on International Labor Standards (TAPILS). On the other hand, one workers' organization, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), has expressed regret at the substantial decline in trade union membership among workers in the United States, which it said was due to the refusal by many American employers to fulfil their legal obligations regarding trade unions. It also mentions the growth of a "management consultancy" industry which has an annual turnover of US$300 million and advises companies on remaining "union free".

144. The Government of Iraq, contrary to its earlier reply in 1993, has indicated that ratification of the Convention is not possible because its provisions are not covered by national legislation, and that it intends to take steps towards the adoption of legislation with a view to future ratification.

145. The Government of Kenya has indicated that an in-depth reform of national labour relations legislation is under way. In this regard, the Government points out that it has just requested technical assistance from the ILO.

146. The Government of Mauritius has indicated that certain impediments to ratification were identified in the country's legislation at a tripartite seminar that took place in October 1996 with the technical assistance of the ILO. These impediments include the discretionary power of the competent authority to refuse to register a trade union, which is tantamount to prior authorization for setting up a trade union organization. A draft revision of the Labour Code taking into account the provisions of the Convention and drawn up with the ILO's assistance is currently being studied. In addition, the Mauritius Employers' Federation considers that certain provisions of national legislation are not compatible with Articles 2, 3 and 4 of the Convention.

147. The Government of Uganda has indicated that the provisions of Convention No. 87 have been introduced into the Constitution and that efforts have been made to incorporate those provisions in national legislation. Nevertheless, the Government states that there are still difficulties impeding full application of the Convention (in particular problems relating to logistics and infrastructure) and provides no further indication of its intentions with regard to ratification. The Committee notes that the Government has been provided with technical assistance to organize seminars on the problems that may arise from ratification of the Convention.

148. The Government of Singapore has indicated that national legislation and practice are broadly compatible with the provisions of the Conventions and that, given that the existing system provides adequate rights for workers' and employers' organizations, no amendment to the legislation is planned for the future. The Government has not stated its position with regard to future ratification.

149. The Government of Zimbabwe has indicated that the "Harmonization Labour Bill" was intended to harmonize all industrial relations laws in order to ensure that public sector workers enjoyed the same rights as workers in the private sector. However, the Government has not adopted any position with regard to possible future ratification. Furthermore, the Committee notes with interest that Zimbabwe recently ratified Convention No. 98.

Convention No. 98

Anti-union discrimination

150. The Government of Thailand has indicated that national legislation does not provide adequate protection against acts of anti-union discrimination under the terms of the Convention. Furthermore, the Government repeats for Convention No. 98 the information given on the examination of its legislation with regard to Convention No. 87, thereby indicating that there are still certain obstacles to ratification at this stage.

Restrictions on collective bargaining

151. The Government of New Zealand has indicated that the 1991 Act concerning employment agreements to a large extent conforms to the provisions of the Convention. The Government recalls that it has introduced a system in which the parties are free to negotiate conditions of employment collectively or individually, which might give rise to disputes. The New Zealand Council of Trade Unions (NZCTU) considers that certain provisions of the 1991 Act constitute fundamental restrictions on the right of collective bargaining.

Other information

152. The Government of Saudi Arabia, while indicating that there is no national legislation or practice for the application of the Convention, indicates that the Labour Code, which is inspired by the principles of sharia law, includes provisions which encourage negotiations between the parties where disputes arise. The ICFTU has provided information according to which collective bargaining is prohibited in the country.

153. The Government of Bahrain has indicated that the Labour Code and numerous Ministerial Orders have been based on the Convention and affirm the right of collective bargaining in all branches of economic activity. The Government considers that national legislation covers every aspect of the questions dealt with by the Convention and, bearing in mind the specific employment conditions prevailing in the country, there is no need to ratify the Convention or apply its provisions. The ICFTU has provided information according to which trade unions are banned in Bahrain. It points out that the right to organize and the right to collective bargaining are not mentioned anywhere in the Labour Code and that the law provides only for a system of consultative labour committees which can only be established with the authorization of the Government.

154. The Government of Canada has indicated that legislation in force at different levels of government is essentially in conformity with the fundamental provisions of the Convention. However, it recalls that, in accordance with a long-established practice with regard to instruments dealing with matters that come under both federal and provincial/territorial jurisdiction, ILO Conventions are ratified only when all the authorities concerned are in favour of so doing. The Governments of Alberta, Nova Scotia, Newfoundland and Ontario indicated that their legislations are not compatible with certain provisions of the Convention and that they did not intend to introduce legislative amendments. The Government of Ontario, for example, states that in its view Articles 4 and 5 of Convention No. 98 do not adequately define which workers and types of employment should be excluded from the right to organize and collective bargaining and that it therefore opposes ratification. The ICFTU has provided information according to which the Canadian authorities, both at federal and provincial levels, have had recourse since 1991 to a number of laws which restrict the right to collective bargaining.

155. The Government of China has indicated that it has introduced the practice of collective bargaining as well as a system of tripartite consultation. The Government also indicates that the number of collective agreements concluded with enterprises is increasing each year. In 1997, for example, collective agreements covering nearly 50 million workers were concluded. Furthermore, a bill concerning collective agreements is being drawn up. As regards prospects for ratification, the Government repeats for Convention No. 98 the information that it provided for Convention No. 87 to the effect that the Government will not be in a position to ratify the Convention in the near future.

156. The Government of the United States has indicated that application of the Convention is broadly guaranteed by the Constitution and legislation, in particular the National Labor Relations Act (NLRA). This Act protects workers against acts of anti-union discrimination and organizations against acts of interference. Collective bargaining is promoted by means of remedies against unfair labour and working practices and by provisions which oblige the parties to meet and bargain in good faith. As for Convention No. 87, the Government also indicates that legislation has remained relatively stable and is generally in conformity with the Convention. No new measures are planned, including with regard to ratification of the Convention. The Government's draft report was reviewed by the Tripartite Advisory Panel on International Labor Standards (TAPILS). However, one workers' organization (the AFL-CIO) emphasizes that while legislation might appear to comply with the terms of the Convention, actual practice in the United States is quite different and it is standard practice for employers to refuse to enter into collective bargaining.

157. The Government of India repeated for Convention No. 98 the information it provided for Convention No. 87, namely, that there was a problem resulting from the distinction in legislation between public servants and other workers. In this regard, the Committee recalls that, according to Article 6 of Convention No. 98, the Convention does not deal with the position of public servants engaged in the administration of the State.

158. The Government of Mexico has indicated that legislation and practice are largely in conformity with the provisions of the Convention. It also indicates that it has just begun consultations with the social partners on possible amendments to labour relations legislation, although without giving any indications as to the ratification process.

159. The Government of Qatar has indicated that collective bargaining is applied both in law and in practice. The Government has also reiterated the same observations that it provided for Convention No. 87 to the effect that the national labour force is concentrated mainly in the public sector. It has provided no indication regarding the possibility of ratification. The ICFTU has provided information according to which collective bargaining is prohibited in Qatar.

160. With regard to Convention No. 98, the following governments reiterated the information given on their reviews of national legislation in relation to Convention No. 87, indicating that the provisions of the Convention would be taken into account but that a number of obstacles to ratification still remain at this stage: Eritrea, Viet Nam.

161. Lastly, the ICFTU has sent observations on the following countries that have not provided a report under *article 19*:

- *Equatorial Guinea*: the ICFTU indicates that trade union rights do not exist in Equatorial Guinea and that the main workers' trade unions are obliged to operate clandestinely, since the Government has hitherto refused to register them;
- *Libyan Arab Jamahiriya*: the ICFTU indicates that independent trade unions are banned in this country. The ICFTU also states that there are no strikes and that public servants who go on strike can be imprisoned or made to do forced labour.

Final remarks

162. In the light of the foregoing information provided by governments, the Committee notes with interest that several governments have ratified or are about to ratify one or both of the fundamental freedom of association and collective bargaining Conventions and that a number of governments have undertaken to eliminate the obstacles that have thus far prevented ratification. The Committee notes, however, that certain States which have been Members of the ILO for many years, including countries with large populations representing approximately half of the workers and employers of the world, still appear to be reluctant to move towards a position which would allow ratification of these two instruments. The Committee reminds the Governments of the great importance of ratifying the ILO freedom of association Conventions, given that the principles on which those instruments are based form one of the foundations of tripartism and should be at the heart of any democracy. With this in mind, and with the 50th anniversary of Convention No. 98 approaching, the Committee once again, as it did on the occasion of the 50th anniversary of Convention No. 87, addresses an urgent appeal to those governments that have not yet ratified one or other of these Conventions to do so.

IV. Technical assistance in the field of standards

A. Direct contacts

163. Direct contacts missions concerning freedom of association were made to Indonesia upon recommendation of the International Labour Conference Committee on the Application of Standards, to Djibouti and the Republic of Korea upon recommendation of the Committee on Freedom of Association, and to Nigeria at the request of the Governing Body of the ILO. In respect of the Republic of Korea, a tripartite mission which, in this instance, was composed of members of the Committee on Freedom of Association, visited the Republic.

B. Promotional activities

164. Since the last meeting of the Committee of Experts, several regional and subregional seminars and symposia on international labour standards and freedom of association have been held: a Tripartite Subregional Seminar on Convention No. 87 in Nairobi (September) for Kenya, Uganda and the United Republic of Tanzania, a seminar on Conventions Nos. 87 and 98 in India (Dehra Dun in May) to promote the ratification of these two Conventions within the framework of the 50th anniversary of the adoption of Convention No. 87; a symposium in Spain (Seville in September), and a seminar on freedom of association for the representatives of workers' organizations in francophone countries in Paris (October).

165. The Committee noted that for several years, the Department has been carrying out activities for the promotion of the ILO standards system by holding seminars on standards and the ILO legal information system. This consists specifically of ILOLEX, a CD-Rom database on international labour standards; and NATLEX, a database on national legislation in respect of labour, social security and human rights questions. During 1998, in close collaboration with the multidisciplinary advisory teams and with the support of the regional offices, seminars were held in Europe and the United States. The participants in these seminars, senior officials from other international organizations such as the World Bank, employers' and workers' organizations, together with representatives from the judiciary and researchers, were given the opportunity to familiarize themselves with these databases and to discuss current subjects relating to standards. It should also be recalled that a special promotional effort of both ILOLEX and NATLEX was made during the International Labour Conference. The Department set up and maintained a "Standards booth" in the ILO building offering constant access to and assistance in the use of both ILOLEX and NATLEX.

166. The Department has been given the responsibility of managing the international labour standards section of the ILO Internet website. A document was presented to the Legal Issues and Labour Standards Committee (LILS) for the March 1997 session of the Governing Body concerning Internet publication of standards-related information, and the Committee welcomed this new promotional initiative. More importantly, the two departmental legal databases — ILOLEX and NATLEX — have now been made globally available on the ILO website. Statistically, these two databases respond to a monthly average of 80,000 Internet requests for information on labour standards and national labour legislation. These requests, in a normal month, come from approximately 50 different countries from every area of the world.

167. The Committee also noted that the Standards Department continues to organize its annual training course for government officials responsible for reporting on international labour standards which is held at the Turin Centre and in Geneva during the two weeks immediately preceding the June Conference. Many of the fellows stay on in Geneva to participate in the work of the Conference Committee on the Application of Standards. This year the course was attended by 38 participants from the following countries: Argentina, Bahrain, Belarus, Benin, Bosnia Herzegovina, Burkina Faso, China (Special Administrative Region of Hong Kong), Colombia (2), Côte d'Ivoire, Cuba, Czech Republic, Djibouti, Egypt, El Salvador, Ethiopia, Fiji, Grenada, Guinea-Bissau, Islamic Republic of Iran, Jordan, Kazakhstan, Republic of Korea, Lebanon (2), Lesotho, Mauritania, Mexico, Niger, Senegal, Seychelles, Sudan, Swaziland, United Republic of Tanzania (2), Togo, and Turkey (2). In addition, NORMES officials make presentations on standards on a regular basis to training courses on other subjects organized by the Turin Centre.

168. Other activities for the promotion of standards took the form of participation in seminars, workshops, symposia and meetings, and the provision of advisory services, technical assistance and consultations concerning international labour standards for the following countries and territories: Bangladesh, Botswana, Brazil, Cameroon, Canada, Chile, France, Gabon, Georgia, Germany, Italy, Republic of Korea, Morocco, Namibia, occupied Arab territories, Philippines, South Africa, Spain, Thailand, Tunisia, Ukraine, United States and Uruguay.

169. Moreover, an edition of the *Digest of decisions and principles of the Committee on Freedom of Association* has been published in Portuguese and the ILO publication "Freedom of Association" is now available in eight languages: German, Arabic, English, Chinese, Spanish, French, Portuguese and Russian. A technical guide on the procedures governing freedom of association is in the process of completion.

C. Standards and multidisciplinary advisory teams

170. The Committee noted that specialists in international labour standards were in place in 9 of the 16 multidisciplinary teams (MDTs) (in Bangkok, Beirut, Harare, Lima, Manila, Moscow, New Delhi, San José and Santiago de Chile). It noted that there remained to date a further four such vacancies (Abidjan, Addis Ababa, Dakar, and Port-of-Spain) and that no provision had been made for such posts in the Budapest, Cairo and Yaoundé MDTs. The Committee recalled that the services provided by the MDTs — and especially the standards specialists, where they exist — include assisting national constituents in fulfilling their standards-related obligations and promoting tripartite consultations on these issues. The standards specialists play an important role within the framework of the Director-General's ratification campaign of the fundamental Conventions of the ILO, as well as within the framework of the Active Partnership Policy towards the integration of standards considerations in country objectives and implementation of the objectives in terms of international labour standards.

171. The Committee notes with interest the continued organization by several teams of *International Labour Standards Updates*, which aim to inform constituents of standard-related procedures and obligations, including reporting obligations to the Committee of Experts, as well as new developments in international labour standard-setting and application, in one-day national meetings. The Committee welcomes the continued efforts made by the MDTs and the standards specialists in providing explanations and assistance as to the measures called for to overcome the obstacles to application which the Committee itself has pointed to in its observations and direct requests. It also welcomes the continued efforts made by the International Labour Standards Department to support and supplement the work of the standards specialists and especially the efforts made to help certain regions or countries in the absence of a standards specialist or the required technical expertise. Considering the beneficial effect of a similar previous decision, the Committee notes with interest the plan to bring standards specialists and associate experts on standards from the field to headquarters on mission during the International Labour Conference in June 1999, since this enables comparison of experience and mutual briefing on current issues preoccupying relevant headquarters departments, and facilitates contacts with national tripartite constituents represented in delegations to the Conference.

172. The Committee continues to be impressed by the vital role played by standards specialist and the MDTs as a whole in regard to the promotion and supervision the fullest possible application of the entire range of international labour standards. It therefore recalls the desirability of ensuring a sufficiency of qualified standards specialists in the field so that the MDTs are able to play that part, whilst maintaining the full capacity of the International Labour Standards Department to service the supervisory bodies.

V. Role of employers' and workers' organizations

173. At each session, the Committee draws the attention of governments to the role that employers' and workers' organizations are called upon to play in the application of Conventions and Recommendations and to the fact that numerous Conventions require consultation with employers' and workers' organizations, or their collaboration in a variety of measures. The Committee notes with satisfaction that almost all governments have indicated in the reports supplied under articles 19 and 22 of the Constitution the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, they have communicated copies of the reports supplied to the ILO.[5] Almost all governments have indicated the organizations to which they have communicated copies of the information supplied to the ILO on the submission to the competent authorities of the instruments adopted by the Conference.[6]

174. In accordance with established practice, the ILO sent to the representative organizations of employers and workers a letter concerning the various opportunities open to them of contributing to the implementation of Conventions and Recommendations, accompanied by relevant documentary material, and a list of the reports due from their respective governments and copies of the Committee's comments to which the governments were invited to reply in their reports.

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[5] Direct requests have been addressed to the following States: Bolivia, Ethiopia, Italy, Nepal, Nicaragua, Paraguay, Russian Federation.

[6] Direct requests have been addressed to the following States: Bahamas, Indonesia, Iraq.

Observations made by employers' and workers' organizations

175. Since its last session, the Committee has received 246 observations, 41 of which were communicated by employers' organizations and 205 by workers' organizations. It shows again the interest of employers' and workers' organizations in the implementation of ILO standards and reflects the constant efforts made by the supervisory bodies and the Office to give interested organizations complete information on their role in this area. The Committee stresses the importance it attaches to this contribution by employers' and workers' organizations to the work of the supervisory bodies, which is essential for the Committee's evaluation of the application of ratified Conventions in law and in practice. It invites the employers' and workers' organizations to continue and augment their contribution to the supervisory system.

176. The majority of observations received (217) relate to the application of ratified Conventions (see list in Appendix II, page 60). Twenty eight observations relate to the reports provided by governments under article 19 of the Constitution of the ILO relating to the Migration for Employment Convention (No. 97), and Recommendation (No. 86) (Revised), 1949, and to the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and Migrant Workers Recommendation, 1975 (No. 151).[7]

177. The Committee notes that, of the observations received this year, 123 were transmitted directly to the International Labour Office which, in accordance with the practice established by the Committee, referred them to the governments concerned for comment. In 94 cases the governments transmitted the observations with their reports, sometimes adding their own comments.

178. The Committee also examined a number of other observations by employers' and workers' organizations, consideration of which had been postponed from the last session because the observations of the organizations or the replies of the governments had arrived just before or just after the session. It has had to postpone the examination of a number of observations to its next session, when they were received too close to or even during the Committee's present session to allow sufficient time for the governments concerned to make comments and for the Committee to consider the matters involved.

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[7] World Confederation of Labour (WCL); ***Argentina***: General Confederation of Labour; ***Austria***: Federal Chamber of Labour; ***Barbados***: Barbados Employers' Confederation, Barbados Workers' Union (BWU); ***Belgium***: Confederation of Christian Trade Unions (CSC); ***Brazil***: National Confederation of Commerce, National Confederation of Transport (CNT); ***Estonia***: Association of Estonian Trade Unions, Confederation of Estonian Industry and Employers (CEIE); ***Finland***: Commission for Local Authority Employers, Confederation of Finnish Industry and Employers (TT) — Employers' Confederation of Service Industries (LTK) [jointly], Employers' Confederation of Service Industries (LTK), Finnish Confederation of Salaried Employees (STTK), Central Organization of Finnish Trade Unions (SAK), Confederation of Unions for Academic Professionals in Finland (AKAVA); ***Republic of Korea***: Federation of Korean Trade Unions, Korea Employers' Federation (KEF); ***Lebanon***: Association of Industrialists; ***Mauritius***: Mauritius Employers' Federation (MEF), Mauritius Confederation of Workers; ***New Zealand***: New Zealand Council of Trade Unions (NZCTU); ***Portugal***: Confederation of Trade and Services of Portugal, General Confederation of Portuguese Workers (CGTP-IN); ***Sweden***: Swedish Agency for Government Employers, Swedish Employers' Confederation (SAF); ***Turkey***: Turkish Confederation of Employers' Associations (TISK), Confederation of Turkish Trade Unions (TÜRK-IŞ).

179. The Committee notes that in most cases the employers' and workers' organizations endeavoured to gather and present precise elements of law and fact on the application in practice of ratified Conventions. It notes that the matters dealt with in these observations have touched on a very wide range of Conventions relating, in particular, to the following subjects: protection of the right to organize and the right to collective bargaining, wage payment, discrimination, forced labour, minimum wage fixing, occupational safety and health, employment policy, labour inspection, tripartite consultations relating to international labour standards, maritime labour, social security. The second part of this report contains most of the comments made by the Committee on cases in which the comments raised matters relating to the application of ratified Conventions. Where appropriate, other comments are examined in requests addressed directly to the governments.

180. The Committee notes lastly that the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), has now received 88 ratifications. Thus, the number of ratifications has more than tripled since the General Survey on the Convention in 1982, which noted favourable prospects in this respect.[8] The Committee hopes that many other countries will be able to ratify it, all the more since some have recently adopted provisions to establish tripartite bodies for ILO activities, with reference to the 1976 instruments.

VI. Reports on ratified Conventions
(articles 22 and 35 of the Constitution)

Supply of reports

181. The Committee's principal task consists of the examination of the reports supplied by governments on Conventions which have been ratified by member States or which have been declared applicable to non-metropolitan territories.

182. In accordance with the decision to rearrange the regular supervisory procedures, adopted by the Governing Body at its 258th Session (November 1993), reports were requested this year on 34 ratified Conventions.[9] These reports cover the period ending 1 September 1998. Furthermore, detailed reports were also requested from certain governments on other Conventions, in accordance with the criteria approved by the Governing Body concerning the obligation to send reports more frequently.[10] The procedures which are followed and established practice with regard to the obligations relating to international labour standards are found in the *Handbook of procedures relating to international labour Conventions and Recommendations*.

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[8] International Labour Conference, 68th Session, Geneva, 1982, Report III (Part 4(B)), para. 202.

[9] Conventions Nos. 1, 2, 5, 8, 27, 29, 30, 34, 35, 36, 37, 38, 39, 40, 44, 45, 47, 59, 82, 87, 88, 96, 100, 108, 117, 122, 129, 130, 136, 142, 147, 167, 168, 169.

[10] GB.258/LILS/6/1 (Nov. 1993), para. 12(c).

Reports requested and received

183. A total of 2,036 reports were requested from governments on the application of Conventions ratified by member States (article 22 of the Constitution). At the end of the present session of the Committee, 1,264 of these reports had been received by the Office. This figure corresponds to 62.1 per cent of the reports requested, compared with 62.8 per cent last year. The Committee regrets that, as indicated in paragraphs 196 and 197 below, a number of reports received are incomplete and do not enable it to reach conclusions regarding the application of the Conventions concerned. A table showing reports received and not received, classified by country and by Convention, is to be found in Part Two (section I, Appendix I). Another table (section I, Appendix II) shows, for each year in which the Committee has met since 1931, the number and percentage of reports received by the prescribed date, by the date of the meeting of the Committee, and by the date of the session of the International Labour Conference.

184. In addition, 293 reports were requested on Conventions declared applicable with or without modifications to non-metropolitan territories (articles 22 and 35 of the Constitution). Of these, 127 reports, 43.3 per cent, had been received by the end of the Committee's session, in comparison with 72.7 per cent last year. A list of the reports received and not received, classified by territory and by Convention, is to be found appended to section II of Part Two of this report.

185. In those cases in which the reports were not accompanied by copies of the relevant legislation, statistical data or other documentation necessary for their full examination, and where this material was not otherwise available, the Office, as requested by the Committee, wrote to the governments concerned asking them to supply the necessary texts to enable the Committee to fulfil its task.

Compliance with reporting obligations

186. Most of the governments from which reports were due on the application of ratified Conventions have supplied all or most of the reports requested, as can be seen from Appendix I, Part Two, section I. However, 60 governments have not complied with their obligation to supply reports on ratified Conventions. Thus, all or the majority of the reports due this year have not been received from the following countries: Australia (Norfolk Island), Belize, Burkina Faso, Cameroon, Cape Verde, China (Special Administrative Region of Hong Kong), Comoros, Congo, Djibouti, Dominica, Equatorial Guinea, Fiji, France, France (French Guiana), France (French Polynesia), France (French Southern and Antarctic Territories), France (Guadeloupe), France (Martinique), France (St. Pierre and Miquelon), Ghana, Guinea, Guinea-Bissau, Haiti, Iraq, Kenya, Kyrgyzstan, Latvia, Libyan Arab Jamahiriya, Madagascar, Malaysia (Sarawak), Malta, Mauritania, Mongolia, Myanmar, Netherlands (Aruba), Niger, Paraguay, Philippines, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Solomon Islands, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Uganda, United States (American Samoa), United States (Guam), United States (Northern Mariana Islands), United States (Puerto Rico), United States (United States Virgin Islands). No reports have been received for the past two or more years from the following countries: Afghanistan, Antigua and Barbuda, Armenia, Bosnia and Herzegovina, Burundi, Democratic Republic of the Congo, Denmark (Faeroe Islands), Georgia, Grenada, Liberia, Mali, Republic of Moldova, Nigeria, Saint Lucia, Sierra Leone, Somalia, United Republic of Tanzania (Zanzibar), Uzbekistan.

187. The Committee urges the governments of these countries, and also of those which have sent only some of the reports due, to make every effort to supply the reports requested on ratified Conventions. Where no reports have been sent for a number of years, it is likely that particular problems of an administrative or technical nature are preventing the government concerned from fulfilling its obligations under the ILO Constitution, and it may be that in cases of this kind assistance from the Office, in particular with the help of members of multidisciplinary advisory teams who are specialists on international labour standards, could enable the government to overcome its difficulties.

Late reports

188. The Committee is once again bound to emphasize the importance of communicating reports in due time. The reports due on ratified Conventions were to be sent to the Office between 1 June and 1 September 1998. Due consideration is given, when fixing this date, particularly to the time required to translate the reports, where necessary, to conduct research into legislation and other necessary documents, and to examine reports and legislation. The supervisory procedure can function correctly only if reports are communicated in due time. This is particularly true in the case of first reports or reports on Conventions where there are serious or continuing discrepancies, which the Committee has to examine in greater depth.

189. The Committee observes that the great majority of reports are received between the time-limit fixed and the date on which the Committee meets: by 1 September 1998, the proportion of reports received was only 22.7 per cent. This is lower than for its previous session (28.7 per cent), and the Committee is still concerned, since it notes that it is often first reports and those relating to Conventions on which the Committee has made comments that are received the latest. In these circumstances, the Committee has been bound in recent years to postpone to its following session the examination of an increasing number of reports, since they could not be examined with the necessary care owing to lack of time. It has thus had to examine a number of reports at its present session which had previously been deferred.

190. The Committee wishes to draw attention to the problem of the timing of transmission by governments of their reports. This year, only a small percentage of reports due were received by the requested date. The Committee notes that under the calendar for the reporting cycle implemented as a result of the decisions taken by the Governing Body in November 1993 the figure has not improved. The majority of reports received from governments continued this time to arrive in the last three months before the Committee's meeting or even during it. This obviously places a huge strain on the supervisory process and effectively makes it impossible for particular cases to be dealt with adequately or at all.

191. The Committee has noted with interest the efforts made by the Office — particularly through the standards specialists present in several of the multidisciplinary teams — to assist in ensuring the fulfilment of reporting obligations. It proposes to consider this question again in the light of the experience of the next few years. In the meantime, it appeals to all governments to examine the means by which their labour administrations can best take advantage of the new reporting arrangements and make sure the obligations are fulfilled.

192. Furthermore, the Committee notes that a number of countries sent the reports due on ratified Conventions during the period between the end of the Committee's work and the beginning of the International Labour Conference, or even during the

Conference.[11] The Committee emphasizes that this practice disturbs the regular operation of the supervisory system and makes it more burdensome.

Supply of first reports

193. A total of 57 of the 127 first reports due on the application of ratified Conventions were received by the time that the Committee's session ended. However, a number of countries have failed to supply first reports, some of which are more than a year overdue. Thus, certain first reports on ratified Conventions have not been received from the following States: since 1992 — Liberia (Convention No. 133); since 1994 — Latvia (Conventions Nos. 111, 122, 135 and 151); since 1995 — Armenia (Convention No. 111), Burundi (Conventions Nos. 87, 100 and 111), Kyrgyzstan (Convention No. 133), Republic of Moldova (Convention No. 105), Nigeria (Convention No. 144), Seychelles (Convention No. 149); since 1996 — Armenia (Conventions Nos. 100, 122, 135 and 151), Grenada (Conventions Nos. 87, 100 and 144), Latvia (Conventions Nos. 81, 129, 132, 154, 155 and 158), Uzbekistan (Conventions Nos. 47, 52, 103 and 122); and since 1997 — Cyprus (Convention No. 147), Mali (Conventions Nos. 135, 141, 151 and 159).

194. First reports have particular importance since it is the basis on which the Committee makes its initial assessment of the observance of ratified Conventions. The Committee therefore requests the governments concerned to make a special effort to supply these reports.

Replies to the comments of the supervisory bodies

195. Governments are requested to reply in their reports to the observations and direct requests of the Committee, and the majority of governments have provided the replies requested. In accordance with the established practice, the International Labour Office wrote to all the governments who failed to provide such replies, requesting them to supply the necessary information. Of the 47 governments to which such letters were sent, only 19 have provided the information requested.

196. The Committee notes that there are still many cases of failure to reply to its comments; either:

(a) out of all the reports requested from governments, no report or reply has been received; or

(b) the reports received contained no reply to most of the Committee's comments (observations and/or direct requests) and/or did not reply to the letters sent by the Office.

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[11] For the reports received and not received by the end of the Conference, see Report of the Committee on the Application of Standards, Part Two, IC and IIB.

197. In all there were 353 such cases,[12] as compared with 385 last year. The Committee notes with concern that there is still a very high number of these cases. It is bound to repeat the observations or direct requests already made on the Conventions in question.

198. The failure of the governments concerned to fulfil their obligations considerably hinders the work of the Committee of Experts and that of the Conference Committee, and the Committee of Experts cannot overemphasize the special importance of ensuring the dispatch of the reports and replies to its comments on time.

Examination of reports

199. In examining the reports received on ratified Conventions and Conventions declared applicable to non-metropolitan territories, the Committee follows its usual practice of assigning to each of its members the initial responsibility for a group of Conventions. Reports received early enough are sent to the members concerned in advance of the Committee's session. The members submit their preliminary conclusions on the instruments for which they are responsible to all their colleagues for their examination. These conclusions are then presented to the Committee in plenary sitting by their respective authors for discussion and approval. Decisions on comments are adopted by consensus, without prejudice to experts who wish to put forward different opinions, as was the case in the past.

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[12] ***Afghanistan*** (Conventions Nos. 100, 105, 111, 137, 141, 142); ***Antigua and Barbuda*** (Conventions Nos. 29, 81, 111, 138); ***Australia: Norfolk Island*** (Convention No. 122); ***Belize*** (Conventions Nos. 5, 8, 29, 88); ***Bosnia and Herzegovina*** (Convention No. 122); ***Burkina Faso*** (Conventions Nos. 29, 87, 100, 129); ***Burundi*** (Conventions Nos. 11, 19, 29, 81, 94, 105); ***Cape Verde*** (Conventions Nos. 100, 118); ***Comoros*** (Conventions Nos. 1, 26, 99, 100, 122); ***Congo*** (Conventions Nos. 29, 87, 95); ***Democratic Republic of the Congo*** (Conventions Nos. 26, 29, 62, 88, 94, 98, 100, 117, 118, 119); ***Denmark: Faeroe Islands*** (Conventions Nos. 9, 16, 92); ***Djibouti*** (Conventions Nos. 1, 9, 19, 26, 37, 38, 55, 69, 81, 87, 88, 91, 94, 95, 96, 99, 100, 105, 106, 108, 115, 120, 122, 126); ***Dominica*** (Conventions Nos. 8, 26, 29, 87, 97, 100); ***Equatorial Guinea*** (Conventions Nos. 1, 30); ***Fiji*** (Conventions Nos. 8, 29); ***France: French Polynesia*** (Conventions Nos. 9, 13, 19, 53, 69, 82, 111, 115, 120, 142); ***France: French Southern and Antarctic Territories*** (Conventions Nos. 8, 22, 73, 134, 146); ***France: Guadeloupe*** (Conventions Nos. 100, 131, 142, 146, 147, 149); ***France: St. Pierre and Miquelon*** (Conventions Nos. 100, 142, 147); ***Ghana*** (Conventions Nos. 29, 30, 74, 87, 94, 98, 100, 103, 111, 117); ***Grenada*** (Conventions Nos. 26, 58, 81, 99, 105); ***Guinea*** (Conventions Nos. 87, 98, 100, 111, 117, 122, 136, 142); ***Guinea-Bissau*** (Conventions Nos. 19, 26, 45, 81, 88, 91, 100, 108, 111); ***Haiti*** (Conventions Nos. 5, 87, 100); ***Iraq*** (Conventions Nos. 8, 100, 105, 111, 136, 138, 142, 167); ***Kenya*** (Conventions Nos. 29, 142); ***Kyrgyzstan*** (Conventions Nos. 29, 98, 100, 108, 122, 147); ***Latvia*** (Conventions Nos. 87, 100, 105, 108, 115, 119, 131, 142, 149); ***Liberia*** (Conventions Nos. 22, 29, 53, 55, 58, 87, 92, 98, 105, 111, 112, 113, 114); ***Libyan Arab Jamahiriya*** (Conventions Nos. 1, 29, 52, 53, 88, 95, 98, 100, 103, 105, 121, 122, 128, 130, 138); ***Madagascar*** (Conventions Nos. 29, 87, 100, 111, 119, 120, 122); ***Mali*** (Conventions Nos. 26, 29, 81, 87, 100, 105, 111); ***Malta*** (Conventions Nos. 1, 45, 87, 96, 100, 117, 119); ***Mauritania*** (Conventions Nos. 29, 87, 118, 122); ***Mongolia*** (Conventions Nos. 87, 100, 122); ***Nepal*** (Conventions Nos. 100, 131); ***Netherlands: Aruba*** (Conventions Nos. 25, 87, 94, 95, 101, 122, 135, 137, 138, 142, 145, 146); ***Niger*** (Conventions Nos. 87, 119, 131, 138, 142); ***Nigeria*** (Conventions Nos. 19, 26, 59, 88, 100, 105, 155); ***Paraguay*** (Conventions Nos. 30, 60, 87, 100, 117, 119, 120, 122, 169); ***Philippines*** (Conventions Nos. 17, 59, 88, 100, 110, 122, 144); ***Rwanda*** (Conventions Nos. 87, 100); ***Saint Lucia*** (Conventions Nos. 5, 17, 19, 87, 94, 95, 97, 98, 100, 111); ***Sao Tome and Principe*** (Conventions Nos. 87, 88, 98, 100, 111, 144, 159); ***Senegal*** (Conventions Nos. 100, 102, 122); ***Seychelles*** (Conventions Nos. 5, 8, 87); ***Sierra Leone*** (Conventions Nos. 8, 26, 29, 59, 88, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126, 144); ***Solomon Islands*** (Conventions Nos. 8, 29); ***Somalia*** (Convention No. 111); ***Tajikistan*** (Conventions Nos. 29, 92, 98, 100, 111, 122, 147, 160); ***Togo*** (Conventions Nos. 87, 100); ***Uganda*** (Conventions Nos. 17, 122).

Observations and direct requests

200. In many cases, the Committee has found that no comment is called for regarding the way in which a ratified Convention has been implemented. In other cases, however, the Committee has found it necessary to draw the attention of the governments concerned to the need to take further action to give effect to certain provisions of Conventions or to supply additional information on given points. As in previous years, its comments have been drawn up in the form either of "observations" which are reproduced in the report of the Committee, or "direct requests", which are not published in the report, but are communicated directly to the governments concerned.[11]

201. As in the past, the Committee has indicated by footnotes the cases in which, because of the nature of the problems met in the application of the Conventions concerned, it has seemed appropriate to ask the Government to supply a detailed report earlier than would otherwise have been the case. Under the system of spacing out reports, which applies to most Conventions, such early reports have been requested after an interval of either one or two years, according to circumstances. In some instances, the Committee has also requested the Government to supply full particulars to the Conference at its next session in June 1999.

202. The observations of the Committee appear in Part Two (sections I and II) of this report, together with a list under each Convention of any direct requests. An index of all observations and direct requests, classified by country, is provided at the beginning of this report.

Cases of progress

203. In accordance with its usual practice, the Committee has drawn up a list of the cases in which it has been able to express its satisfaction at certain measures taken by governments to make the necessary changes in their country's law or practice following comments by the Committee on the degree of conformity between national law or practice and the provisions of a ratified Convention. Details concerning the cases in question are to be found in Part II of this report and cover 39 instances in which measures of this kind have been taken in 33 countries. The full list is as follows:

State	*Conventions Nos.*
Algeria	81
Barbados	100
Belarus	87
Benin	100
Bosnia and Herzegovina	87

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[11] ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, Geneva, Rev.2/1998, para. 54(k).

State	*Conventions Nos.*
Colombia	3
Costa Rica	87
Côte d'Ivoire	3, 135
Croatia	87
Ecuador	100
Fiji	105
France	138
Gabon	158
Jordan	81
Kyrgyzstan	87
Latvia	87
Lebanon	81
Mozambique	87
Netherlands	29, 103
New Zealand	42, 105
Nicaragua	87
Niger	81, 111
Nigeria	87
Panama	55
Poland	87
South Africa	87, 98
Syrian Arab Republic	117
Tajikistan	87
The former Yugoslav Republic of Macedonia	87
United Arab Emirates	81
United Kingdom	87
Yemen	87
Zambia	29, 87

204. Thus, the total number of cases in which the Committee has been led to express its satisfaction with the progress achieved following its comments has risen to 2,203 since the Committee began listing them in its reports in 1964. In addition, there have been many cases in which the Committee has been able to note with interest various measures that have been taken following its comments with a view to ensuring a fuller application of ratified Conventions. All these cases provide an indication of the efforts made by governments to ensure that their national law and practice are in conformity with the provisions of the ILO Conventions they have ratified.

205. These cases do not, however, as the Committee regularly points out, exhaust the instances in which Conventions and Recommendations have a measurable influence on the law and practice of member States. For example, the Committee has again noted a number of cases this year in which it is clear from the first report on the application of a Convention that new legislative or other measures were adopted shortly before or after ratification.

Practical application

206. As in previous years, the Committee has been concerned with assessing, on the basis of the information available, the extent to which national legislation giving effect to ratified Conventions is applied in practice. A number of questions designed to elicit information on this point are included in the report forms approved by the Governing Body for the Conventions, and the replies of governments to these questions constitute an appreciable, though uneven, source of information on practical application available to the Committee. The Committee has also taken into account other authoritative sources of information. These consist, in particular, of reports from other international or regional organizations, of the annual reports of labour inspection services, statistical yearbooks published in the States or by the ILO, observations of employers' or workers' organizations, compilations of judicial or administrative decisions, reports on direct contacts, reports on technical cooperation projects and missions, and other official publications such as manuals, studies and economic and social development plans.

207. The Committee notes that this year some 66.4 per cent of the reports supplied on Conventions for which information on practical application was specifically requested contained such data. Remarking that this percentage is lower in comparison with recent years, the Committee reiterates its appeal to all governments to continue to make every effort to include the information requested in their future reports.

208. The following countries have provided information on practical application in more than half the reports concerned: Argentina, Australia, Austria, Belarus, Belgium, Brazil, Burkina Faso, Canada, Chile, Czech Republic, Dominican Republic, El Salvador, Estonia, Finland, France, Gabon, Germany, Guatemala, Honduras, Hungary, India, Ireland, Italy, Japan, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Mozambique, Netherlands, New Zealand, Nicaragua, Niger, Panama, Philippines, Portugal, Russian Federation, Slovenia, Spain, Sweden, Syrian Arab Republic, Thailand, Turkey, Uruguay.

209. The Committee wishes particularly to thank governments that have given information on practical application in their reports, as this information has greatly helped it in assessing more accurately the extent to which ratified Conventions are actually applied in these countries.

210. As in previous years, the Committee has addressed direct requests to certain countries which have not replied to the questions in the report forms on practical application. The Committee notes that, again this year, the majority of the countries in question are developing countries and that certain of them have referred specifically to difficulties of a financial and/or administrative nature which are preventing them from compiling the statistical and other information requested. The Committee is of the opinion that these are also cases in which technical assistance from the International Labour Office, particularly when provided by the multidisciplinary advisory teams, could assist in overcoming the difficulties in question.

211. The Committee also notes with interest the judicial and administrative decisions on questions of principle relating to the application of ratified Conventions to which certain countries have referred in their reports. It noted that 64 reports contain information of this kind and thereby shed additional light on the problems raised in these cases by the practical application of the Conventions in question.

VII. Submission of Conventions and Recommendations to the competent authorities

(article 19, paragraphs 5, 6 and 7, of the Constitution)

212. In accordance with its terms of reference, the Committee this year examined the following information supplied by the governments of member States, pursuant to article 19 of the Constitution of the International Labour Organization:

(a) information on the steps taken to submit to the competent authorities within the time-limit of 12 or 18 months, as provided for in the Constitution, the following instruments adopted at the 84th (Maritime) Session of the Conference in October 1996: the Labour Inspection (Seafarers) Convention (No. 178) and Recommendation (No. 185); the Recruitment and Placement of Seafarers Convention (No. 179) and Recommendation (No. 186); the Seafarers' Hours of Work and the Manning of Ships Convention (No. 180) and Recommendation (No. 187); and the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147);

(b) information on the steps taken to submit to the competent authorities within the time-limit of 12 or 18 months the following instruments adopted by the Conference at its 85th Session (June 1997): the Private Employment Agencies Convention (No. 181) and Recommendation (No. 188);

(c) additional information on the steps taken to submit to the competent authorities the instruments adopted by the Conference from its 31st Session (1948) to its 83rd Session (June 1996) (Conventions Nos. 87 to 177 and Recommendations Nos. 83 to 184);

(d) replies to the observations and direct requests made by the Committee at its session in November-December 1997.

84th (Maritime) Session

213. The Committee recalls that submission to the competent authorities of the texts adopted at the 84th (Maritime) Session of the Conference (October 1996) should have been made within one year or, under exceptional circumstances, within 18 months of the close of the session. The latest dates for submission were 22 October 1997 and 22 April 1998 respectively. The Committee notes with interest that the governments of the following member States have provided information on the steps taken with a view to submission to the competent authorities of the instruments adopted by the Conference at its 84th Session: Barbados, Bahamas, Bulgaria, Canada, China, Cuba, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Finland, Germany, Greece, Iceland, Indonesia, Jamaica, Japan, Jordan, Republic of Korea, Kuwait, Lebanon, Luxembourg, Malta, Mauritius, Myanmar, Netherlands, New Zealand, Nicaragua, Panama, Paraguay, Poland, Portugal, Romania, San Marino, Singapore, Slovenia, Switzerland, Tajikistan, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United States, Viet Nam.

214. The Committee notes that in certain cases there has been no mention of submission to the competent authorities of the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). The Committee wishes to emphasize that under the terms of article 19 of the Constitution, submission to the competent authorities of all instruments (Conventions, Recommendations and Protocols) adopted by the Conference is obligatory.

85th Session

215. Submission to the competent authorities of the Convention and Recommendation adopted at the 85th Session of the Conference (June 1997) was to have been made within one year or, under exceptional circumstances, within 18 months of the close of the session, the final dates for submission being 19 June 1998 and 18 December 1998 respectively. The Committee notes with interest that the governments of the following member States have provided information on the steps taken with a view to submission to the competent authorities of the instruments adopted by the Conference at its 85th Session: Albania, Azerbaijan, Bulgaria, Cuba, Czech Republic, Dominican Republic, Ecuador, Egypt, Ethiopia, Germany, Greece, Iceland, Islamic Republic of Iran, Jamaica, Jordan, Republic of Korea, Lebanon, Luxembourg, Mauritius, Morocco, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Panama, Portugal, Qatar, Romania, San Marino, Saudi Arabia, Trinidad and Tobago, Togo, Tunisia, Turkey, Ukraine, United Arab Emirates, Viet Nam, Zimbabwe.

31st to 83rd Sessions

216. The Committee welcomes the considerable efforts that have been made, in particular by the Governments of Bulgaria, Chile, Guinea, Ireland, Lebanon, Mauritius and Sri Lanka, to submit to the competent authorities the instruments adopted by the Conference over a number of sessions.

217. The table in Appendix I to section III of Part Two of this report shows the position of each member State as it emerges from the information supplied by the governments, with regard to the discharge of the obligation to submit instruments adopted by the Conference to the competent authorities. Appendix II shows the overall situation with regard to instruments adopted from the 31st to the 85th Sessions of the Conference.

General aspects

218. In 1950 the Committee for the first time examined the discharge of obligations relating to the submission of instruments to the competent authorities. Since then, both it and the Conference Committee on the Application of Standards have continued to monitor the discharge of this important obligation which is one of the most original features of the Organization's standard-setting system. It was as a result of the amendment made in 1946 to article 19 of the Constitution, which entered into force in 1948, and of the modifications made as a result of this amendment by the Governing Body to the Committee's terms of reference, that the Committee was made responsible for examining information communicated to the Director-General by governments on the submission of instruments adopted by the Conference to the competent national authorities and to report on its findings. It follows that the obligation to submit contributes to the dialogue between the Committee of Experts and the Conference Committee, but also provides a channel between the International Labour Conference and the legislative authorities of member States.

219. The *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, with additions made by the Governing Body at the suggestion of the Conference Committee, on the last occasion at its 212th Session in February-March 1980, clarified many of the issues raised in practice and identified in precise terms the information that should be communicated to the ILO. In the first place, Members are asked to indicate which authority is competent according to the Constitution or basic law of the State, that is to say, empowered to legislate or take appropriate measures to give effect to instruments adopted by the Conference. In general, this would be the legislative assembly in which case there is no difficulty. In particular cases, the Committee asks governments to inform and mobilize public opinion with regard to the instruments adopted by the Conference by submitting them to the parliamentary body.

220. Secondly, Members are asked to indicate the date on which the instruments in question were submitted to the competent authorities. The provisions of article 19, paragraphs 5, 6 and 7, of the Constitution stipulate that instruments must be submitted within one year or, in exceptional circumstances, within 18 months, from the close of the session of the Conference. The time-limits apply both to federal States and to non-federal States.

221. In order that the competent national authorities may be kept up to date on the standards adopted at the international level which may require action by each State to give effect to them at the national level, submission should be made as early as possible and in any case within the time-limits set by article 19 of the ILO Constitution. Governments remain entirely free to propose any action which they may judge appropriate in respect of Conventions and Recommendations. In general, the aim of the submission is to encourage a rapid and responsible decision by each member State on the instruments adopted by the Conference.

222. The Committee again notes with concern that many countries are late in submitting the instruments adopted by the Conference to the competent authorities. The Committee is grateful to governments which, in answer to the ILO's reminders, report regularly on the progress made in terms of national measures to ensure that the submission is made as early as possible.

223. In some cases, governments postpone any decision with regard to the appropriate measures "for the enactment of legislation or other action" *(article 19, paragraphs 5(b) and 6(b))*. In order that it may assess the manner in which the submission is made, the Committee must have copies of the documents by means of which the Conventions and Recommendations were submitted to the competent authorities, and of any proposals which may have been made in accordance with the *Memorandum* of 1980. The Committee trusts that governments will make every effort to indicate their position on the instruments adopted by the Conference and that they will provide information on the substance of the documents by means of which the instruments were submitted.

224. Thirdly, the *Memorandum* of 1980 emphasizes that, if the submission is to have its full effect, it is also essential that the legislative authority have an opportunity to debate the matters addressed by the instruments adopted by the Conference. In this case, the substance of the decision taken by the competent authorities should be indicated.

225. Lastly, under the terms of article 23, paragraph 2, of the Constitution, it is of paramount importance to ensure that the representative organizations of employers and workers receive copies of any communications addressed to the ILO concerning the submission to the competent authorities of instruments adopted by the Conference. This enables the employers' and workers' organizations to formulate their own observations on the action that has been taken or needs to be taken with regard to the instruments in question. This important constitutional obligation was reinforced by the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which stipulates that member States that have ratified the Convention are required to implement procedures for effective consultations between representatives of the government, the employers and the workers on the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations.[14] Member States that have not yet ratified Convention No. 144 may refer to the relevant provisions of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152). In this way, employers' and workers' organizations are encouraged to formulate their own observations concerning the action that has been or should be taken with regard to the instruments adopted by the Conference.

226. In its last General Review of the Discharge of the Obligation concerning Submission to the Competent Authorities,[15] the Committee indicated that, without the replies to its observations and direct requests concerning submission, it would be unable to carry out its tasks. The Committee therefore recalls that governments may address the Office directly in order to transmit all the information requested in the *Memorandum* of 1980. Letters sent by the Office transmitting the authentic copies of instruments adopted by the Conference and reminders of the constitutional time-limits sometimes give rise to an exchange of correspondence with governments, which allows the Committee to gather all the information requested in the *Memorandum* and thus dispense with observations or direct requests.

227. The Committee has taken note of the activities of the multidisciplinary teams and their standards specialists in assisting governments in meeting their obligations of submission. The Committee would encourage governments who wish to do so to contact the multidisciplinary teams and the ILO's International Labour Standards Department to ensure that the discharge of the constitutional obligation of submission gives rise to a dialogue with the ILO that will be fruitful both for the officials responsible for preparing documents for the submission of instruments adopted by the Conference, and for the members of the legislative assemblies concerned.

Comments of the Committee and replies from governments

228. As in its previous reports, the Committee in section III of Part Two of this report makes individual observations on the points that it considers should be brought to the special attention of governments. In seven of these observations (Bulgaria, Chile, Guinea, Ireland, Lebanon, Mauritius, Sri Lanka), the Committee has expressed satisfaction at the measures taken to submit instruments to the competent authorities. In addition, requests with a view to obtaining supplementary information on other points have been addressed directly to a number of countries, which are listed at the end of section III.

229. The Committee regrets that a number of governments have failed to provide replies to its comments, even after reminders have been sent by the Office in accordance with the requests made to it by the Committee (see Part Two, section III of this report). The Committee again expresses the hope that governments will endeavour in future to supply all the required information and documents.

230. The Committee wishes once more to point out the importance of the communication by governments of the information and documents called for in points I and II of the questionnaire in the *Memorandum* adopted by the Governing Body. The

[14] Art. 5, para. 1(b), of Convention No. 144.

[15] Report of the Committee of Experts, 54th Session, 1970.

Committee trusts that the governments concerned will take suitable measures as requested in the observations and direct requests addressed to them.

Special problems

231. The Committee is bound to note with regret that no information has been supplied by the following 28 governments showing that the Conventions and Recommendations adopted by the Conference during at least the last seven sessions (from the 78th to the 85th Sessions) have in fact been submitted to the competent authorities: Afghanistan, Belize, Brazil, Cambodia, Cameroon, Central African Republic, Comoros, Congo, Guatemala, Guinea-Bissau, Haiti, Honduras, India, Kyrgyzstan, Liberia, Madagascar, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Solomon Islands, Somalia, Swaziland, Syrian Arab Republic, United Republic of Tanzania and Yemen. The fact that these countries, and most of those referred to in the many observations contained in Part III of this report, have accumulated a long backlog in this context is a cause of deep concern to the Committee. Indeed there is a danger that some of them may find it very difficult to bring themselves up to date. What is more, neither the legislative authorities nor public opinion in these countries are regularly informed of the existence of new instruments as the Conference adopts them, which defeats the real purpose of the obligation to submit explained in the preceding paragraphs.

232. Finally, the Committee wishes to recall that the obligation to submit the instruments adopted by the Conference implies the obligation to submit these instruments to the legislative body within the time-limits prescribed by the ILO Constitution. The government must communicate to the Office (with a copy to the representative employers' and workers' organizations) the information required in the *Memorandum* of 1980 with regard to the date of submission, the competent authority and the proposals that may have been formulated setting out the action to be taken on these instruments. The Committee deems it necessary to again insist on the nature of the submission, which does not imply any obligation on the part of the government to propose the ratification of the Conventions or the approval of the recommendations in question. Taking into account the explanations given by some States in their reports, the nature and scope of the obligation to submit are indicated in individual observations addressed to these States. The Committee expresses the firm hope that the governments concerned will promptly undertake to submit the instruments adopted at the sessions indicated, and that it will be able to note the progress made in this respect in its next report. The Committee finally recalls that governments have the possibility of asking the International Labour Office for the technical assistance which it is able to provide, particularly through the multidisciplinary advisory teams, in an endeavour to solve this type of problem.

VIII. Instruments chosen for reports under article 19 of the Constitution

233. In accordance with the decisions taken by the Governing Body, governments were requested to supply reports under article 19, paragraphs 5 and 7, of the ILO Constitution on the Migration for Employment Convention (No. 97) and Recommendation

(No. 86) (Revised), 1949, and on the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the Migrant Workers Recommendation, 1975 (No. 151).

234. A total of 635 reports were requested and 349 received.[16] This represents 55 per cent of the reports requested.

235. The Committee notes with regret that, for the past five years, none of the reports on unratified Conventions and Recommendations requested under article 19 of the ILO Constitution has been received from: Afghanistan, Armenia, Djibouti, Fiji, Georgia, Haiti, Kazakhstan, Lesotho, Liberia, Libyan Arab Jamahiriya, Republic of Moldova, Nigeria, Saint Lucia, Solomon Islands, Somalia, The former Yugoslav Republic of Macedonia, Turkmenistan.

236. The Committee can only urge governments once again to provide the reports requested so that its General Surveys can be as comprehensive as possible.

General Survey

237. Part Three of this report (issued separately as Report III (Part 1B)) contains the General Survey of the Committee on questions covered by Conventions Nos. 97 and 143 and Recommendations Nos. 86 and 151. In accordance with the practice followed in previous years, the survey has been prepared on the basis of a preliminary examination by a working party comprising four persons appointed by the Committee from among its members.

* * *

238. Lastly, the Committee would like to express its appreciation for the invaluable assistance again rendered to it by the officials of the ILO, whose competence and devotion to duty make it possible for the Committee to accomplish its increasingly complex task in a limited period of time.

Geneva, 11 December 1998.

(Signed) Sir William Douglas,
Chairperson.

E. Razafindralambo,
Reporter.

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[16] ILO: Report III (Part 1B), ILC, 87th Session, 1999.

Appendix I. List of the 61 member States which have been asked to submit reports on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and/or on the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

(article 19 of the Constitution)

Member States	Convention No. 87	Convention No. 98
Afghanistan	X	X
Angola	C	ratified
Armenia	C	C
Bahamas	C	ratified
Bahrain	R	R
Brazil	R	ratified
Cambodia	R	R
Canada	ratified	R
Cape Verde	C	ratified
Chile	R	R
China	R	R
Congo	ratified	R
Democratic Republic of the Congo	C	ratified
El Salvador	R	R
Equatorial Guinea	X	X
Eritrea	R	R
Fiji	C	ratified
Gambia	X	X
Georgia	C	ratified
Guinea-Bissau	C	ratified
India	R	R
Indonesia	ratified	ratified
Islamic Republic of Iran	C	C
Iraq	R	ratified
Jordan	R	ratified
Kazakhstan	C	C
Kenya	C	ratified
Republic of Korea	R	R
Kuwait	ratified	C

Member States	Convention No. 87	Convention No. 98
Lao People's Democratic Republic	R	R
Lebanon	R	ratified
Libyan Arab Jamahiriya	X	ratified
Malawi	C	ratified
Malaysia	R	ratified
Mauritania	ratified	C
Mauritius	R	ratified
Mexico	ratified	R
Morocco	R	ratified
Myanmar	ratified	R
Nepal	R	ratified
New Zealand	R	R
Oman	C	C
Papua New Guinea	R	ratified
Qatar	R	R
Saint Kitts and Nevis	C	C
Saint Vincent and the Grenadines	C	C
Saudi Arabia	R	R
Seychelles	ratified	R
Singapore	R	ratified
Solomon Islands	X	X
Somalia	X	X
Sudan	C	ratified
Switzerland	ratified	R
United Republic of Tanzania	C	ratified
Thailand	R	R
Uganda	C	ratified
United Arab Emirates	R	R
United States	R	R
Uzbekistan	X	ratified
Viet Nam	R	R
Zimbabwe	R	ratified

R = Report received for this examination.
C = Report received under ratification campaign.
X = Report not received.

Appendix II. List of observations made by employers' and workers' organizations

Argentina

	on Conventions Nos.
Association of the Teachers of Santa Cruz	95
Union of Press Workers of Buenos Aires	87, 95, 98, 111, 154, 156, 158

Australia

	on Conventions Nos.
Australian Council of Trade Unions (ACTU)	29, 87, 98, 144
National Union of Workers	87

Barbados

	on Conventions Nos.
Congress of Trade Unions and Staff Associations of Barbados	144

Belarus

	on Conventions Nos.
Federation of Trade Unions of Belarus	142, 144

Brazil

	on Conventions Nos.
Latin American Central of Workers (CLAT)	29, 105
Stevedors' Trade Union of Santos, São Vicente, Guarujá and Cubatão	137
Union of Railway Enterprises Workers, Area of Mogiana	142

Chile

	on Conventions Nos.
Unitary Occupational Front of Pensioners and Survivors of Chile, 5th Region	35, 36
World Federation of Trade Unions (WFTU)	14

Comoros

	on Conventions Nos.
Union of Comoros Workers' Autonomous Trade Unions	95

Costa Rica

	on Conventions Nos.
Union of Workers, Pensioners and Others of the National Register	98

Croatia

	on Conventions Nos.
Independent Trade Union of Croatian Electric Power Industry	98
Pensioners' Trade Union of Croatia	48
Union of Autonomous Trade Unions of Croatia	81, 98, 103, 111, 119, 135, 155

Cuba

	on Conventions Nos.
World Confederation of Labour (WCL)	111

Djibouti

	on Conventions Nos.
General Union of Djibouti Workers	95
Labour Union of Djibouti	95

Estonia

	on Conventions Nos.
Association of Estonian Trade Unions	2

Finland

	on Conventions Nos.
Central Organization of Finnish Trade Unions (SAK)	30, 87, 88, 100, 120, 122, 129, 130, 140, 142, 152, 168
Commission for Local Authority Employers	87, 100
Confederation of Finnish Industry and Employers (TT), Employers' Confederation of Service Industries (LTK) [jointly]	88
Confederation of Unions for Academic Professionals in Finland (AKAVA)	30, 47, 87, 88, 100, 120, 122, 130, 140, 142
Finnish Confederation of Salaried Employees (STTK)	88, 100, 122, 142, 168

France

	on Conventions Nos.
French Democratic Confederation of Labour (CFDT)	29, 44, 81
General Confederation of Labour - Force Ouvrière (CGT-FO)	44
General Confederation of Labour (CGT)	122

Gabon

	on Conventions Nos.
Confederation of Gabonese Free Trade Unions (CGSL)	29, 81, 87, 98, 135, 144
Free Federation of Energy, Mining and Similar Enterprises (FLEEMA)	87, 98, 135, 144

Greece

	on Conventions Nos.
Confederation of Turkish Trade Unions (TURK-IS)	87
Greek General Confederation of Labor (GSEE)	87, 98

Guatemala

	on Conventions Nos.
Popular Federation of Peasant Farmers	169

Hungary

	on Conventions Nos.
Democratic League of Independent Trade Unions	88
Trade Union Confederation of Professionals	88

India

	on Conventions Nos.
Centre of Indian Trade Unions (CITU)	1, 100, 144
National Front of Indian Trade Unions	29, 45
Standing Conference of Public Enterprises (SCOPE)	29

Italy

	on Conventions Nos.
General Confederation of Industry (CONFINDUSTRIA)	2

Japan	on Conventions Nos.
• All Japan Shipbuilding and Engineering Union	29
• Japan National Hospital Workers' Union	98, 100
• Japanese Trade Unions Confederation (JTUC-RENGO)	29, 87, 100
• Korean Confederation of Trade Unions	29
• National Network of Fire Fighters	87
• Osaka Fu Special English Teachers Union	29
• Tokyo Local Council of Trade Unions	29

Kazakhstan	on Conventions Nos.
• Air Crew Trade Union of Almaty	148

Liberia	on Conventions Nos.
• International Confederation of Free Trade Unions (ICFTU)	29

Mexico	on Conventions Nos.
• Authentic Labour Front	169

Nepal	on Conventions Nos.
• General Federation of Nepalese Trade Unions	98

New Zealand	on Conventions Nos.
• New Zealand Council of Trade Unions (NZCTU)	17, 29, 42, 44, 47, 59, 88, 100, 122
• New Zealand Employers' Federation (NZEF)	17, 42, 47, 59, 88, 100, 122

Norway	on Conventions Nos.
• Norwegian Federation of Oil Workers' Trade Unions (OFS)	170

Paraguay	on Conventions Nos.
• World Federation of Trade Unions (WFTU)	122

Peru	on Conventions Nos.
• Dockers' Union of the Port of Mayor de Callao	152
• Federation of Workers in the Lighting and Power Industry of Peru	87, 98
• Union of Crew Members of Maritime Vessels for the Protection of Workers	71
• United Trade Union of Technicians and Specialized Auxiliary Workers of the Peruvian Social Security Institute	24, 87, 98, 102, 151
• World Federation of Trade Unions (WFTU)	44, 122

Portugal	on Conventions Nos.
• General Confederation of Portuguese Workers (CGTP-IN)	45, 102, 122, 129, 131, 160

Russian Federation	on Conventions Nos.
• Education and Science Employees' Union of Russia (ESEUR)	95
• Health Workers Union of the Russian Federation	95
• Timber and Related Industries Workers' Union of Russia	95

Spain

	on Conventions Nos.
General Union of Workers (UGT)	81, 103, 111, 131, 144, 173

Sri Lanka

	on Conventions Nos.
Labour Officers' Association	81
Lanka Jathika Estate Workers' Union	81, 87, 98, 100, 131, 135

Suriname

	on Conventions Nos.
Suriname Trade and Industry Association	122

Sweden

	on Conventions Nos.
Swedish Employers' Confederation (SAF)	129, 168
Swedish Trade Union Confederation (LO)	27, 152

Turkey

	on Conventions Nos.
Confederation of Turkish Employers' Associations (TISK)	45, 58, 59, 87, 88, 95, 96, 98, 99, 100, 122, 142
Confederation of Turkish Trade Unions (TURK-IS)	45, 58, 59, 88, 95, 96, 98, 99, 100, 122, 142
Energy, Road, Construction, Infrastructure, Title Deed Land Survey Public Sector Employees Trade Union	87, 98, 135, 151

Ukraine

	on Conventions Nos.
Independent Union of Miners at the Barakov Mine Enterprise	87, 98

United Kingdom

	on Conventions Nos.
Trades Union Congress (TUC)	87, 102

Uruguay

	on Conventions Nos.
Latin American Central of Workers (CLAT)	95

Zambia

	on Conventions Nos.
Zambia Congress of Trade Unions	29, 45, 87, 95, 98, 144

PART TWO

Observations concerning particular countries

OBSERVATIONS CONCERNING PARTICULAR COUNTRIES

I. Observations concerning reports on ratified Conventions
(article 22 of the Constitution)

A. General observations

Afghanistan

The Committee notes with regret that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Antigua and Barbuda

The Committee notes with regret that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Armenia

The Committee notes with regret that, for the fourth year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office. The Committee also notes that the first report due since 1995 on Convention No. 111 has not been received; nor have the first reports due since 1996 on Conventions Nos. 100, 122, 135 and 151. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of these Conventions.

Bosnia and Herzegovina

The Committee notes that the reports due have not been received. Given the Government's intention to rectify this situation, the Committee hopes that appropriate measures will be taken to discharge its obligation to supply reports on the application of the Conventions ratified as soon as circumstances so permit.

Burundi

The Committee notes that the reports due have not been received, including the first reports on Conventions Nos. 87, 100 and 111. It hopes that appropriate measures, including ILO technical assistance as requested by the Government, will be taken to discharge its obligation to supply reports on the application of the Conventions ratified as soon as circumstances so permit.

Cyprus

The Committee notes with regret that the first report due since 1997 on Convention No. 147 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of this Convention.

Democratic Republic of the Congo

The Committee notes with regret that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Georgia

The Committee notes with regret that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Grenada

The Committee notes with regret that, for the fourth year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office. The Committee also notes that the first reports due since 1996 on Conventions Nos. 87, 100 and 144 have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of these Conventions.

Kyrgyzstan

The Committee notes with regret that the first report due since 1995 on Convention No. 133 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of this Convention.

Latvia

The Committee notes with regret that the first reports due since 1994 on Conventions Nos. 111, 122, 135 and 151 have not been received, as well as the first reports due since 1996 on Conventions Nos. 81, 129, 132, 154, 155 and 158. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of these Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Liberia

The Committee notes the evolution of the national situation and trusts that the Government will not fail in future to discharge its obligation to supply all reports on the application of ratified Conventions, including the first report due on Convention No. 133, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Mali

The Committee notes with regret that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office. The Committee also notes that the first reports due since 1997 on Conventions Nos. 135, 141, 151 and 159 have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of these Conventions.

Republic of Moldova

The Committee notes with regret that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office. The Committee also notes that the first report due since 1995 on Convention No. 105 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of this Convention.

Nigeria

The Committee notes that the reports due, including a first report on Convention No. 144 due since 1995, have not been received. It observes also, however, that the Governing Body at its November 1998 session took note of the report of a direct contacts mission concerning the observance by Nigeria of Conventions Nos. 87 and 98, endorsed the mission's concluding observations and in particular referred the mission report to this Committee for examination in connection with the application of relevant ratified Conventions. The mission's concluding observations drew attention to the desirability of technical cooperation with the Office as a means of addressing the range of problems arising in connection with ratified Conventions, especially those relating to fundamental rights (Nos. 29, 100 and 105, as well as Nos. 87 and 98) and other priority Conventions (Nos. 81 and 144) and including the reporting obligations in respect of all Conventions. The Committee is again making appropriate individual comments to the Government concerning ratified Conventions. It hopes the Government will supply all the reports due and that it will provide information on progress made in all of these matters.

Saint Lucia

The Committee notes with regret that, for the seventh year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Seychelles

The Committee notes with regret that the first report due since 1995 on Convention No. 149 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of this Convention.

Sierra Leone

The Committee notes that the reports due have not been received. It hopes that appropriate measures, including ILO technical assistance as requested by the Government, will be taken to discharge its obligation to supply reports on the application of the Conventions ratified as soon as circumstances so permit.

Somalia

The Committee notes that the report due have not been received. It hopes that appropriate measures will be taken to discharge its obligation to supply reports on the application of the Conventions ratified as soon as circumstances so permit.

United Republic of Tanzania

Zanzibar

The Committee notes with regret that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Uzbekistan

The Committee notes with regret that, for the third year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office. The Committee also notes that the first reports due since 1996 on Conventions Nos. 47, 52, 103 and 122 have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of these Conventions.

Yugoslavia

In the light of the decisions adopted by the competent bodies of the United Nations considering that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot automatically ensure the continuity of membership of the former Federal Socialist Republic of Yugoslavia, as well as the inferences drawn from this by the ILO Governing Body, the Committee considers it preferable, in order not to prejudge this question, not to proceed to examine the application of the Conventions ratified by the former Federal Socialist Republic of Yugoslavia.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Belize, Benin, Bolivia, Bulgaria, Burkina Faso, Cameroon, Cape Verde, Central African Republic, China (Hong Kong Special Administrative Region), Comoros, Congo, Djibouti, Dominica, Equatorial Guinea, Fiji, France, Ghana, Guinea, Guinea-Bissau, Haiti, Iraq, Kenya, Kyrgyzstan, Latvia, Libyan Arab Jamahiriya, Madagascar, Malaysia (Sarawak), Malta, Mauritania, Mongolia, Myanmar, Niger, Nigeria, Paraguay, Philippines, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Slovakia, Solomon Islands, Tajikistan, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Uganda.***

B. Individual observations

Convention No. 1: Hours of Work (Industry), 1919

Argentina (ratification: 1933)

The Committee notes the Government's report for the period ending June 1998 and the information provided in reply to its previous observation. With reference to the 1993 communication from the Congress of Argentine Workers (CAT) alleging that draft legislation provided for daily working hours which could reach a maximum of ten hours, the Government states that no draft legislation provides for changes in the current legal provisions concerning working hours contained in Act No. 11.544 and Decree No. 13.943/44.

Furthermore, the Government states that the National Directorate of Occupation Safety and Health, which forms part of the Ministry of Labour and Social Security, ceased its activities at the end of 1995 and that certain of its functions have been taken over by the Superintendency of Work-related Risks. This body has not registered the complaint which the Single Trade Union of Argentine Dock Workers (SUPA) submitted to the above National Directorate and which covered, among other matters, the fact that daily working hours in the port sector could sometimes exceed 12 continuous hours. The Committee requests the Government to indicate whether the Superintendency of Work-related Risks is competent to deal with complaints of the nature of the one submitted in August 1995 by the SUPA to the General Directorate of Occupational Safety and Health and to supply any texts governing its activities and competence.

The Committee notes the information to the effect that the current working hours arrangements in the port sector are established by the Decree governing hours of work for loading operations in the Port of Buenos Aires (No. 6284 of 3 June 1960), which was extended to all national ports under the terms of Decree No. 3457 of 18 November 1966. It requests the Government to indicate the consequences on the above arrangements of the adoption of the Act respecting port activities (No. 24093 of 24 June 1992). Finally, it requests the Government to indicate whether effect is given to sections 17 and 18 of the Decree respecting the deregulation of the economy (No. 2364 of 31 October 1991) and, where appropriate, to indicate the impact of the implementation of the above provisions on working hours arrangements in the above sectors.

Bolivia (ratification: 1973)

The Committee notes the information provided by the Government in its report on the application of the Convention. It regrets the fact that the General Labour Bill, drawn up with the technical assistance of the ILO over several years, has not been endorsed by the Government. It therefore regrets that no progress has been achieved in bringing certain points of the General Labour Act of 1942 into conformity with the provisions of the Convention.

The Committee wishes to recall that for very many years it has been commenting on the fact that section 50 of the General Labour Act, which provides that the labour inspectorate may authorize up to two additional hours of work a day under any circumstances, is not in conformity with *Article 6, paragraphs 1(b) and 2, of the Convention*, which only admits temporary exceptions to deal with exceptional cases of pressure of work and on the condition that the maximum of additional hours which may be authorized is determined in each case in regulations made by public authority.

The Committee trusts that the Government will not fail to keep the ILO informed of the progress made in the revision of the General Labour Act and that it will be able to bring its legislation into conformity with the provisions of the Convention as soon as possible.

Equatorial Guinea (ratification: 1985)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> Further to its previous comments concerning *Article 6 of the Convention*, the Committee notes with satisfaction the provisions of Act No. 2/1990, issuing the general labour regulations, which set out the permanent and temporary exceptions to normal working time that are authorized (section 49). It also notes the provisions of the same Act concerning the exceptions to be allowed in case of accident, actual or threatened, or in case of urgent work, or in case of *force majeure*, in accordance with *Article 3*.
>
> The Committee would be grateful if the Government would provide the text of the regulations implementing section 49 of the Act No. 2/1990, which are to be made after consultation with employers' and workers' organizations. It notes in this connection the Government's statement that Act No. 12/1992 of 1 October 1992, respecting trade unions and collective labour relations, opens up prospects for the formation of workers' and employers' organizations which will have a role to play in making regulations and fixing working conditions.
>
> More generally, the Committee asks the Government to provide information on the way in which the Convention is applied, including, for example, extracts of labour inspection reports or statistics, as requested in the report form *(Part VI)*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Guatemala (ratification: 1988)

The Committee notes the Government's report and the information provided in reply to its previous direct request. The Committee's previous comments concerned in particular section 122 of the Labour Code, which provided that a working day including overtime could not exceed 12 hours. Noting that the Labour Code, as amended in 1995, reproduces this same provision, the Committee recalls once again that the exceptions envisaged by *Article 6 of the Convention* must remain within reasonable limits, and the authorization of up to four overtime hours a day without other guarantees, such as for example a monthly or an annual limit, considerably exceeds the exceptions authorized by the Convention and is resolutely contrary to the spirit in which it was drawn up. The Government states in its report that it envisages giving effect to the Committee's comments by taking the necessary measures to determine, after consultation with the representative organizations of employers and workers, the circumstances in which overtime hours may be worked and the maximum number of overtime hours which may be authorized in each case. The Committee hopes that such measures will be adopted in the near future and requests the Government to keep the ILO informed of any progress achieved in this respect.

India (ratification: 1921)

The Committee notes the information provided by the Government in January 1998 in relation to a communication addressed to the ILO in 1997 by the Mahabubnagar District Palamoori Contract Labour Union. It also notes a communication from the Centre of Indian Trade Unions (CITU) addressed to the ILO in July 1998. Finally, with reference to its previous observation, the Committee notes the latest report of the Government, which contains information in reply to its previous comments, as well as the observations of the CITU and the Government's responses on the issue of the hours of work in the rail transport sector and their conformity with the provisions of the Convention.

With reference to the observation that it made in 1993, the Committee recalls that the Central Railway Mazadour Sangh claims eight-hour shifts for cabinmen, levermen, pointsmen and guardsmen and states that these personnel, whose work has been classified as "essentially intermittent", are providing services for traffic which is ten times greater than at the time of the adoption of the rules concerning their working hours. The Committee requested the Government to transmit the results of the most recent job analyses concerning these groups of workers. In its latest report, the Government states that job analyses are undertaken for each category of workers upon request and adds, by way of illustration, that pointsmen at Ghoradogri Station in Nagpur Division have recently benefited from a reclassification of their work as increased pressure of work gave rise to an analysis of their jobs. Noting the examples of the job analyses provided by the Government, the Committee requests it to indicate the manner in which the organizations of employers and workers participate in these analysis and classification procedures. In this respect, it wishes to recall the obligation to consult the representative organizations set out in *Article 6 of the Convention*.

The Committee notes the exchange of communications between the Government and the ILO on the question of a modification to the wording of *Article 10* of the Convention. In this respect, it requests the Government to indicate the action that it intends taking as a result, and whether it envisages adopting measures along the lines proposed by the ILO.

With reference to its direct request of 1994, in which it recalled the allegations made by the Calcutta Dock Workers' Union, to the effect that since 1982, the escorts and guards employed by Coal India Ltd. have been working continuously for 24 hours a day without any break, the Committee notes that the Government confines itself to indicating that the allegations are incorrect and that escorts and guards work in shifts according to schedules that are in accordance with the legislation. It requests it to indicate the legal provisions which are applicable in this respect and to specify the available information which enables it to establish that the allegations made by the Calcutta Dock Workers' Union are unfounded.

With regard to the action taken in the courts against an employer in the Goa region for the violation of the industrial legislation that is in force on the grounds of the conditions of employment accorded to workers from the Palamoori region, the Committee notes the information contained in a communication of April 1997 from the Mahabubnagar District Palamoori Contract Labour Union, as well as a communication from the Government to the ILO in January 1998 providing copies of the decisions of the judicial bodies concerned. It requests the Government to continue providing such information, where appropriate, in accordance with *point V of the report form*.

Kuwait (ratification: 1961)

The Committee notes the Government's report and the comments provided in reply to its previous observation. The Government states that the possibility of applying to the public sector the new regulations respecting exceptions from the normal hours of work, which has been in force since the adoption of Ministerial Order No. 104/94 is being examined by the public authorities. It also provides information on the provisions of section 1 of Order No. 105/94, which, according to the Government, only authorizes exceptions from the normal hours of work within the limits set out in Order No. 104/94. The Committee notes this information and hopes that the Government will therefore amend accordingly paragraph 3 of Order No. 105/94, which refers to the Labour Law in the Private Sector (No. 38/64). An amendment of this nature would make it possible to overcome any ambiguity which may still exist with regard to the provisions which are applicable concerning the authorized limits for overtime work. Finally, the Government indicates its commitment to extending the application of the new Labour Law in the Private Sector, which is still in draft form, to all categories of workers, including temporary workers and workers in small and medium-sized enterprises. The Committee once again hopes that it will be adopted in the near future and requests the Government to keep the ILO informed of the progress achieved in this respect.

Syrian Arab Republic (ratification: 1960)

The Committee notes the Government's report on the application of the Convention. It notes, from the information provided, that section 117 of the Labour Code, which was the subject of its previous comments, has still not been amended to bring it into conformity with the Convention. The Committee has been drawing the Government's attention for many years to the fact that the provisions of this section, which provides that "hours of work and pauses must be organized in such a fashion that the presence of the worker at the workplace does not exceed 11 hours a day", are liable to result in abuse and wishes to remind it once again of the need to amend these provisions so as not to require the presence of the worker at the workplace beyond the limits of normal working hours which, in accordance with *Article 2 of the Convention*, must not exceed eight in the day.

The Committee notes the Government's communication addressed to the ILO in August 1998 in which it undertakes to take into account the comments of the Committee and the Office by amending the latest versions of the draft texts to bring the national legislation into conformity with the provisions of certain ILO Conventions, including Convention No. 1. The Committee requests the Government to keep the ILO informed of the progress achieved in this respect.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Comoros, Djibouti, Libyan Arab Jamahiriya, Malta, Paraguay*.

Convention No. 2: Unemployment, 1919

Guyana (ratification: 1966)

Article 2, paragraph 1, of the Convention. The Committee notes with interest the information provided by the Government in its report. The Government indicates that a Training and Placement Committee has been established to advise and oversee the operations of the Central Recruitment and Placement Agency of the Ministry of Labour. This Committee comprises two representatives of the employers' organization, two representatives of the workers' organization and two government representatives. The Committee hopes that in its next reports, the Government will continue to supply information on the progress achieved by the Training and Placement Committee, including reports on measures taken or contemplated to combat unemployment.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Central African Republic, Estonia, Morocco, South Africa, Sudan, Ukraine.*

Convention No. 3: Maternity Protection, 1919

Argentina (ratification: 1933)

Article 3(c) of the Convention. The Committee notes that the Government's report contains no reply to its earlier comments. However, the Committee notes with interest the adoption in 1996 of Act No. 24.714 concerning the family benefits scheme which, under the terms of section 11, reduced the length of service required as a condition for entitlement to cash benefits during maternity leave from six to three months. The Committee once again requests the Government to indicate whether women workers who do not meet this condition are entitled to cash benefits from public funds or under a public assistance scheme. The Committee also requests the Government to continue to provide information on any new measures taken to ensure that all women workers covered by the Convention are entitled to cash benefits during their maternity leave, in accordance with this provision.

In this regard, the Committee notes that under section 2 of Decree No. 1245/96 implementing the afore-mentioned Family Benefits Act, a worker's length of service during the months immediately before his or her current activity may count towards the length of service required before the worker is entitled to benefits. The Committee would be grateful if the Government would clarify the term "in the months immediately before".

Bulgaria (ratification: 1922)

Article 4 of the Convention. In its earlier comments, the Committee noted that section 333 of the Labour Code concerning protection against dismissal did not expressly prohibit giving a woman notice of dismissal during her period of maternity leave or at a time such that the period of notice would expire during her absence from work, in accordance with this provision of the Convention. Under the terms of paragraph 1, subparagraphs 1 and 4 of the section in question, the employer can, after obtaining "the prior agreement of the labour inspectorate", dismiss a pregnant worker or the mother of a child aged below the age of three months, or any worker on authorized leave. Furthermore, prior agreement is required only in the specified cases of dismissal listed in section 328, paragraph 1, subparagraphs 2, 3, 5, 11 and 12 (cancellation of a labour contract with prior notice), and section 340, paragraph 2, subparagraph 5 (cancellation of an employment contract without prior notice). Prior notification of the labour inspectorate therefore appears not to be required for all the other cases of cancelling a labour contract that may be envisaged.

Since the Government's report contains no new information, the Committee can only hope that the Government will be able to re-examine the question and take the necessary measures with a view to including in the Labour Code a provision prohibiting the dismissal of a woman employee during her maternity leave or at a time such that the period of notice would expire during her absence from work, in accordance with *Article 4* of the Convention.

[The Government is asked to report in detail in 2000.]

Colombia (ratification: 1933)

1. *Article 3(a) of the Convention.* With reference to its previous comments, the Committee notes the adoption of Decree No. 936 of 1996 respecting section 236(1) of the Labour Code. The Committee notes with satisfaction that, in accordance with this provision of the Convention, at least six weeks of the worker's paid maternity leave must be taken after confinement, even if the worker chooses to give one week of her maternity leave to her spouse.

2. With reference to its previous comments concerning the extension of the territorial coverage of the social security scheme, the Committee notes with interest the adoption of Decree No. 1298 of 22 June 1994 establishing the social security system. The Committee notes in particular that under section 39 of this Decree, from the year 2000 onwards all persons will be required to join the General Social Security System in Health on a contributory or subsidized basis, and shall thus become entitled to all the benefits provided by the Compulsory Health Plan, including maternity benefits.

The Committee takes note of this information and hopes that the implementation of the General Social Security System will allow coverage of all the women employees covered by the Convention in the near future. The Committee would be grateful if the Government would provide detailed information on the extension in practice of the coverage of the General Social Security System in Health to the entire country, and statistics on the number of women workers covered by the Convention who are entitled to maternity benefits guaranteed under the Compulsory Health Plan, as a proportion of all the women employees in industrial or commercial establishments, whether public or private, as defined in *Article 1* of the Convention, read in conjunction with *Article 3*.

3. The Committee also draws the Government's attention to certain points which it is raising in a direct request.

Côte d'Ivoire (ratification: 1961)

With reference to its previous comments, the Committee notes the information provided by the Government in its report. The Committee also notes Act No. 95-15 of 12 January 1995 (Labour Code). In this regard, the Committee notes with satisfaction that under the terms of section 23.5, paragraph 3, of the Labour Code, notice of dismissal cannot be given to a woman during her absence on maternity leave, nor at such a time that the notice would expire during such absence, in accordance with *Article 4 of the Convention*.

A request regarding the application of *Articles 1 and 3* of the Convention is being addressed directly to the Government.

Nicaragua (ratification: 1934)

Article 3(c) of the Convention. The Committee refers to its previous comments and notes that the Government provides no further information in respect of the extension of the social security scheme. The Committee recalls in this regard that the costs of maternity cash benefits for women who are not covered by the social security scheme continue to be provided directly by the employer whereas this provision of the Convention lays down that cost of benefits must be provided either out of public funds or guaranteed by a system of social insurance. The Committee trusts that the Government will make every effort to extend maternity benefits provided for under the social security scheme throughout the whole of the territory in order to cover all female employees protected by the Convention. The Committee requests the Government to indicate any progress achieved in this respect and to provide information, in particular, statistical data in respect of the geographic cover of the social security scheme with regard to maternity benefits.

Moreover, a request regarding certain points is being addressed directly to the Government.

Panama (ratification: 1958)

The Committee recalls that section 55 of Act No. 25 of 30 November 1992, which lays down a special, comprehensive and simplified system for the establishment and operation of export processing zones, provides that the conditions of employment in export processing zones shall be subject to the common standards contained in the Labour Code, in Act No. 1 of 17 March 1986 and the special laws which are in conformity with the provisions of the above Act No. 25 of 1992.

The Committee noted that, in this respect, the Government's response to its previous comments stated that women employed in export processing zones are covered without exception by the maternity benefit provisions of the Social Security Fund (Legislative Decree No. 14 of 1954). The Committee hopes therefore that, on the forthcoming occasion, for example, of the revision of Act No. 25 of 30 November 1992, a direct reference to Legislative Decree No. 14 of 1954 will be included under section 55 of the said Act. In the meantime, the Committee would request the Government to provide information on the application in practice of the provisions respecting maternity protection (maternity leave, nursing breaks and protection against dismissal) provided for under the Labour Code and the provisions respecting maternity benefits provided for under the Organic Law of the Social Security Fund and its Regulation in respect of women employed in export processing zones by providing, for example, extracts of inspection reports or other official documents, statistics on the number of inspections carried out in export processing zones as well as the violations observed. Please also provide statistics in respect of the number of women employed in export processing zones who have received maternity benefits as well as the amount of these benefits during the period covered by the report.

Venezuela (ratification: 1944)

Articles 1 and 3(c) of the Convention (coverage of the social security scheme). (a) With reference to its earlier comments, the Committee notes the intention of the Government to restructure the social security scheme and the discussions now under way on the adoption of a framework law to reform social security which should improve coverage for working mothers. At the same time, it notes that, according to data provided by the Government, many regions are still not covered by the full social security scheme. Under these circumstances, the Committee is bound to remind the Government once again of the need to take the necessary measures to extend the social security scheme, in particular maternity benefits, to all workers in all regions of the country to ensure that all women workers employed in industrial or commercial undertakings, private or public, enjoy the benefits provided for by the Convention. Such measures would appear to be all the more necessary given that, according to the Government's information, the special resolution envisaged under section 11 of the Social Security Act, as amended in 1991, introducing substitute maternity benefits in localities that are not covered by the social security or free medical assistance schemes has not yet been adopted.

The Committee requests the Government to continue to provide statistics on the regions, whether covered by the social security scheme or not, with regard to maternity benefits. It would also like the Government to provide statistics on the number of women workers employed in industrial and commercial undertakings who are fully covered by the social security scheme in relation to the total number of these workers.

(b) The Committee notes with interest the adoption of Decree No. 3.325 of 13 January 1994, which extends medical and cash benefits for temporary incapacity to persons employed by the national authorities, the federal states, the federal district or the autonomous regions, and to juridical persons under public law. It also notes certain collective accords provided by the Government in response to the Committee's earlier comments, in particular the first collective agreement for public employees (framework agreement) under the terms of which the national public authorities are required to take out insurance for their employees for hospitalization, surgery and maternity.

Given that section 1 of Decree No. 3.325 mentioned above provides for the gradual extension of insurance for medical and cash benefits to the public sector, the Committee requests the Government to indicate whether all women employees in public sector industrial and commercial undertakings are now entitled, in accordance with the Convention, to the medical and cash benefits provided in cases of maternity by the Social Security Act.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Burkina Faso, Cameroon, Colombia, Côte d'Ivoire, Gabon, Germany, Nicaragua, Panama, Venezuela.*

Convention No. 5: Minimum Age (Industry), 1919

Brazil (ratification: 1934)

The Committee takes note of the Government's report. It notes that, since its previous examination of this case, a discussion took place on it at the Conference Committee in 1992.

1. *Minimum age for apprenticeship.* The Committee earlier noted that section 7, paragraph XXXIII, of the Federal Constitution of 1988 prohibits all work by all persons under 14 years of age, except apprentices, and that the same provision has been reproduced in section 60 of Act No. 8069 of 13 July 1990 which defines the status of children and young persons. In the previous observation, it requested the Government to

take the necessary measures to bring law and practice into conformity with the Convention which prohibits employment or work by minors of under 14 years in industrial establishments, including the cases of apprenticeship.

The Committee notes the Government's statement in its report that the President of the Republic submitted to the legislature in October 1996 a draft amendment to the Constitution so as to delete the exception regarding apprentices from its section 7, paragraph XXXIII. It hopes that the Constitution and other relevant legislative provisions will be brought into line with the Convention in the near future, and requests the Government to supply information on any progress made in this regard. The Committee would also appreciate information on the situation in practice of apprenticeship carried out in industrial undertakings covered by the Convention.

2. *Application of the Convention in practice.* In its previous comments, the Committee referred to allegations that a large number of children between 6 and 14 years of age were employed in various industries, in violation of the relevant legislation. The Committee notes the Government's concern expressed in its report that a number of children and adolescents are entering the labour market too early and illicitly. The Government states however that a wide range of actions have been taken in recent years to eradicate child labour, including: the surveillance by the labour inspectorate, in cooperation with employers, government and non-governmental organizations, and the civil society; measures for the general improvement of the quality of life, such as programmes for minimum income, grants for education and so on. According to the report, in 1997, for example, the federal labour inspection covered 78,674 minors, of whom 5,920 were in irregular situations, and 5,086 were regularized, and reported 489 contraventions to the minimum age of 14 years, and 273 contraventions to the prohibited workplace.

The Committee hopes that, besides the measures to bring the provisions of the Federal Constitution (section 7, paragraph XXXIII) and Act No. 8069 (section 60) into conformity with the Convention, the Government will continue to carry out plans and programmes at national, state or local level so as to stop children under 14 years of age working in the undertakings covered by the Convention, whether in the formal or informal sector. The Committee therefore asks the Government to provide information on such plans and programmes as well as the results achieved (including such information as the number of children covered, and referring also to the projects with the assistance of the IPEC (International Programme on the Elimination of Child Labour)). It asks the Government also to supply detailed information on the practical application of the Convention including, for instance, extracts from the reports of the inspection services, school enrolment and attendance rate, and information concerning the number and nature of the contraventions reported, in accordance with *point V of the report form*.

[The Government is asked to report in detail in 2000.]

Colombia (ratification: 1933)

With reference to its previous comments, the Committee notes with interest the document entitled "Report of the Government on the Developments of the National Policy regarding the Eradication of Child Labour and the Protection of Young Workers" of March 1998, attached to the Government's report. It notes that the document shows that there is a significant social and institutional conscience on the magnitude and the seriousness of the problem of child labour, that a major political commitment has been made at national and regional level to prevent and eradicate child labour, with the active participation of employers' and workers' organizations, and that a wide range of actions are being taken in line with the said national policy.

In the analysis of the situation, the above document indicates that 80 per cent of child labour occurs in the informal sector, and 70 per cent within the context of family relations. In this regard, the Committee recalls that the Convention applies to industrial undertakings, irrespective of their size or legal nature, with the exception of undertakings in which only members of the same family are employed. It notes that the document mentions the figure of 784,000 child workers under 12 years, while recognizing that, since no special survey had been made on the issue of child labour, the figures derive from other surveys or studies.

The Committee also notes the Government's indication of its efforts aimed at the ratification of Convention No. 138, and hopes that the Government will keep the Office informed of developments in this regard.

The Committee requests the Government to continue to supply information on the application in practice of the Convention, and measures taken to ensure it, including extracts from official reports, statistical information and details of inspection visits and their results, in accordance with *point V of the report form*.

India (ratification: 1955)

Article 6 of the Convention

The Committee notes from the Government's report that a notification was issued on 23 July 1998 to amend the Schedule to the Child Labour (Prohibition and Regulation) Act 1986 by adding several occupations and processes listed in the Schedule, in which employment of children under 14 years of age is prohibited. It notes that the added items to the Schedule include "mines, stone breaking and stone crushing", and asks the Government to clarify the relation between this amendment and the minimum age of 18 years for work in mines stipulated under the Mines Act, 1952, as amended by Act 42 of 1983.

Enforcement of statutory provisions

Further to its previous observation, the Committee notes the information supplied by the Government in its report concerning its efforts to ensure the effective enforcement of statutory provisions giving effect to the Convention (Child Labour (Prohibition and Regulation) Act, 1986; Factories Act, 1948; Mines Act, 1952). It notes, in particular, the numbers of inspections carried out, violations detected, prosecutions launched and convictions obtained: for instance, as to the enforcement of the Child Labour (Prohibition and Regulation) Act 1986, in the year 1997-98, there were 13,257 inspections carried out, 958 irregularities detected, 676 prosecutions launched, and 29 convictions obtained.

The Committee further notes from the Government's report that 76 child labour projects have ben carried out under the National Child Labour Project Scheme, covering about 105,000 children, and that 120 projects were initiated under IPEC (International Programme on the Elimination of Child Labour) in different States for the benefit of around 81,154 children. It also notes the Government's indication of its continued efforts to realize universal access, retention and achievement of elementary education.

The Committee requests the Government to continue to provide information on measures taken to ensure the strict and effective enforcement of the above provisions giving effect to the Convention, as well as results achieved, including, for example, extracts from official reports, particulars on the results of inspections and prosecutions and statistics concerning child labour or elementary education.

Lesotho (ratification: 1966)

Further to its previous observation on the application of the Convention in practice, the Committee notes the Government's indication in its report that no problems have become apparent so far in terms of the application of the Convention, except for the fact that the Inspectorate Division is unable to fulfil effectively its inspectorate and ancillary functions due to financial constraints and the need for capacity building. It notes that this problem is being addressed through the current programme of capacity building and restructuring of the Ministry of Employment and Labour. The Committee requests the Government to indicate any progress made in this regard, with particular reference to inspection concerning child labour.

The Committee also notes the Government's indication that the projects and skills training centres tailored for keeping children out of industrial and commercial undertakings still exist. It asks the Government to indicate whether the projects have been extended to children under the age of 15 years.

The Committee requests the Government to continue to supply information on the measures taken to ensure the effective enforcement in practice of the national provisions giving effect to the Convention both as regards the minimum age *(Article 2 of the Convention)*, and keeping of registers by the employer *(Article 4)*. Please include, for instance, extracts from official reports and information on the number of inspection visits made, and any practical difficulties encountered.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Bahamas, Belize, Benin, Central African Republic, Chile, Côte d'Ivoire, Czech Republic, Dominican Republic, Guyana, Haiti, Saint Lucia, Seychelles, Singapore, Sri Lanka, Viet Nam.*

Convention No. 6: Night Work of Young Persons (Industry), 1919

Information supplied by *Lao People's Democratic Republic* in answer to a direct request has been noted by the Committee.

Convention No. 7: Minimum Age (Sea), 1920

A request regarding certain points is being addressed directly to *Estonia*.

Convention No. 8: Unemployment Indemnity (Shipwreck), 1920

Iraq (ratification: 1966)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Articles 2 and 3 of the Convention.* For several years the Committee has drawn the Government's attention to the need to adopt legislation providing: (a) under *Article 2* of the

> Convention, that in the event of loss or foundering of a vessel, each person employed thereon shall be paid an indemnity against unemployment for the days during which they remain in fact unemployed at the same rate as the wages payable under the contract, but the total indemnity payable to any one seaman may be limited to two months' wages, and (b) under *Article 3* of the Convention, that seamen shall have the same remedies for recovering such indemnities as they have for recovering arrears of wages earned.
>
> In its report, the Government indicates that article 150 of the Labour Code provides in a clear and explicit manner that in the absence of a provision in the Labour Code, the provisions of the Conventions of the International Labour Organization, in particular, ratified by Iraq shall be applied. It adds, none the less, that it will strive to take legislative measures to dispel any obscurity in this respect.
>
> The Committee notes this information and hopes that the Government will be able, in accordance with the assurances given, to adopt the legal provisions needed to ensure full application of *Articles 2 and 3* of the Convention. It hopes that the Government's next report will contain detailed information on progress made in this respect.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Jamaica (ratification: 1963)

Article 2 of the Convention. Further to its previous observation, the Committee notes the Government's statement that the 1998 Bill on Merchant Shipping has been submitted to Parliament for discussion. It hopes that the adoption of the Bill will give full effect to this provision of the Convention by eliminating the restrictions in section 157 of the United Kingdom Merchant Shipping Act, 1894 (applicable in Jamaica), which provides that "in all cases of wreck or loss of ship, proof that the seaman has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim to wages". The Committee is bound once again to draw the Government's attention to this point, which has been the subject of the Committee's comments for many years and, therefore, trusts that the above Bill will be adopted in the very near future. It requests the Government to report any progress made in this regard and to supply the text of the new Act as soon as it has been adopted.

[The Government is asked to report in detail in 2000.]

Seychelles (ratification: 1978)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> With reference to the Committee's previous comments, the Government indicates that regulation 10 of the new Merchant Shipping (Masters and Seamen) Regulations 1995 provides for unemployment indemnity to seamen in case of shipwreck or loss of the vessel. The Committee notes this information. It notes that this regulation entitles the seaman to receive wages in respect of each day on which he is unemployed, by reason of the wreck or less of the ship, during the period of two months. The Committee would, however, like to draw the attention of the Government to the fact that regulation 9, paragraph 1, of the regulation specifies, as did the previously applicable legislation, that in all cases of wreck of the ship, proof that the seaman has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim to wages. The Committee is bound to state that the new legislation by imposing this restriction fails to provide full application of *Article 2 of the Convention* which provides for payment to each seaman of an indemnity against unemployment, without any restrictions, for a minimum period of two months, in the event of loss or foundering of the vessel. The Committee hopes that the Government will be able to take the necessary measures

in the near future to bring national legislation into conformity with the Convention on this point.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sierra Leone (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 2 of the Convention.* The Committee notes from the information supplied by the Government in its report that the legislation necessary to give effect to the Convention has not yet been adopted. In view of the scant progress made in this regard despite the comments it has been making for many years, the Committee stresses once again that legislative measures should be taken to amend the Merchant Shipping Legislation so as to eliminate the bar to receipt of unemployment indemnity in case of shipwreck where it is proved that a seaman did not exert himself to the utmost to save the ship. The Committee trusts that in its next report the Government will be able to state that the necessary legislation has been adopted to ensure that full effect is given to the Convention.

Solomon Islands (ratification: 1985)

The Committee notes with regret that for the fifth time the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session, together with the text of the Labour (Seamen) Rules adopted in 1985, which according to the Government's previous statement, provides for indemnity against unemployment in case of loss or foundering of a ship, without further qualifications, in conformity with this provision of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Belize, Dominica, Fiji, Luxembourg, Papua New Guinea, Poland, Seychelles, Slovenia.*

Convention No. 9: Placing of Seamen, 1920

Argentina (ratification: 1933)

The Committee notes the Government's report received in November 1997 and the observations communicated by the Union of United Maritime Workers (SOMU).

Article 4 of the Convention. The Committee notes the opinion expressed by the SOMU in a representation made to the Government in May 1997 according to which the introduction of a free system of employment services would be an appropriate response to the profit-making services provided by agencies, cooperatives and commercial enterprises. It notes also that the SOMU regrets the depressed state of the labour market in this sector and the marked aversion on the part of employers towards the establishment of a system of free employment offices for seamen which would be organized and maintained jointly by the shipowners' and seamen's representative organizations. Noting that resolution No. 387/87 of the Minister of Labour authorizing the organization and operation of labour exchanges has been implemented only in the City of Mar del Plata, the SOMU suggests that the scope of this resolution should be extended to cover the other ports concerned. Furthermore, it expresses the wish to call upon the assistance of the ILO. The Committee notes the commitment of the Government to promoting, in accordance with the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the adoption of new collective agreements providing for the establishment of a better organized and more effective placement system than the present one. The Committee can only reiterate its hope that the Government will succeed in overcoming the persistent obstacles that have prevented implementation of this provision of the Convention, according to which a system of employment offices for finding employment for seamen without charge should be organized and maintained either by representative associations of shipowners and seamen jointly under the control of a central authority *(paragraph 1(a))* or, in the absence of such joint action, by the State itself *(paragraph 1(b))*. It trusts that the Government will be able to provide in its next report information on the action that is being taken in response to the SOMU request and, more generally, to inform it of any progress made in giving effect to this provision.

Article 5. The Committee notes the information provided by the Government concerning the suspension of the process of establishing a committee consisting of shipowners' and seamen's representatives to serve in an advisory capacity with regard to matters relating to the work of the free employment offices, until the powers of the National Directorate of Employment and Vocational Training under the Ministry of Labour have been defined. It hopes that the Government will be able to provide information in its next report on any changes in this regard and to provide, where appropriate, copies of the texts governing the membership and functions of the aforementioned advisory committee, as requested in the report form for this Article of the Convention.

Lastly, the Committee recalls that the International Labour Conference recently adopted the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), and Recommendation (No. 186) and that ratification of the new Convention will, as soon as it enters into force, imply immediate denunciation of the present Convention.

[The Government is asked to report in detail in 1999.]

Cameroon (ratification: 1970)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its 1995 observation which read as follows:

> *Article 5 of the Convention.* The Committee notes the information supplied by the Government in its reports for the periods 1989-92 and 1992-93, and particularly the adoption of Act No. 92/007 of 14 August 1992 establishing the Labour Code. The Committee notes that the reports contain no new information in answer to its previous direct requests and that the new Labour Code of 1992 contains no provisions for the constitution of committees which are required under this Article to consist of an equal number of representatives of shipowners and seamen to advise on matters concerning the carrying on of employment offices for seamen. The Committee observes that for several years there has been no progress in giving effect to this Article of the Convention. It is therefore bound to reiterate the hope that the Government will not fail to take the necessary measures in the near future to ensure application of this Article and asks it to indicate in its next report any progress made in this respect.
>
> *Article 10.* The Committee again expresses the hope that in its future reports the Government will provide the statistical or other information required by this Article, and particularly all available information on the activities concerning seamen carried on by the employment offices of Kribi, Limbé and Donala.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Djibouti (ratification: 1978)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its 1995 observation which read as follows:

> *Article 5 of the Convention*. The Committee notes from the Government's reply to the Committee's earlier comments that there is no advisory committee consisting of an equal number of representatives of shipowners and seafarers in the country. The Committee recalls in this connection that this Article provides for the establishment of such committees to advise on matters concerning the carrying on of public employment offices for finding employment for seafarers. With reference to the comments the Committee has been making on this subject over a number of years, it expresses the hope that the Government will not fail to adopt measures in the near future in order to establish such advisory committees and to give effect to this Article of the Convention. It asks the Government to provide, in its next report, information on any progress achieved in this regard.
>
> *Article 10, paragraph 1*. Please provide statistical information as soon as it is available, concerning the number of seafarers registered and the number of placements of seafarers carried out by the Maritime Affairs Service.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Egypt (ratification: 1982)

Article 5 of the Convention. The Committee notes the information provided by the Government in reply to its previous comments. It notes that the recommendations made by the tripartite committee established by Order No. 28 of 1993 do not concern the operation of placement offices for seaman as required under *Article 5* of the Convention. At the same time, it notes the creation by Order No. 38 of 1997 of a new committee that was set up to examine the provisions of the Convention. The Government is asked to provide in its next report a copy of this text and of any other text relating to the membership, working and powers of this new committee. It is also asked to provide the information requested in the report form under this Article of the Convention.

Mexico (ratification: 1939)

1. *Article 4, paragraph 1, and Article 5 of the Convention*. The Committee notes the information provided by the Government in its report according to which the National Employment Service (SNE) aims to match job applicants with vacancies in the productive sector by promoting the productive integration of workers and appropriate collaboration between them. The Government states that during 1996 and the first quarter of 1997, the National Employment Service registered five vacancies on board ocean-going ships; 35 applications were submitted, five were short-listed and one worker was eventually hired. The Committee refers to the comments that it has made for a number of years and trusts that the Government will continue to keep it informed of efforts made in the organization and maintenance of an efficient and adequate system of public employment offices for finding employment for seamen without charge, in accordance with *Article 4*. It trusts that the Government will continue to provide information on the number of applications received, vacancies notified and seamen placed in employment by the employment services, the steps taken to ensure the coordination of these job placement services at national level, and statistical information on unemployment among seamen *(Article 10)*.

2. *Article 5.* The Committee again notes that there are no joint shipowners' and seamen's committees as such. The Government indicates that the services of such committees are provided through other means (collective labour contracts and the Advisory Board of the National Employment Service) established by legislation, which give expression to the wishes of the parties involved in the form of agreements achieved through collective bargaining. The Committee notes that the Advisory Board is a general body and is not a body which could replace the role of specifically oriented committees concerned with the employment of seamen. The Committee therefore reiterates its request that the Government take account of the provisions of *Article 5* of the Convention and take the specific measures needed to establish a consultation process through committees consisting of an equal number of representatives of shipowners and seamen, as required by the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Bulgaria, Estonia, Lebanon, Nicaragua, Panama, Romania, Slovenia, Spain, Uruguay.*

Convention No. 10: Minimum Age (Agriculture), 1921

Requests regarding certain points are being addressed directly to the following States: *Cameroon, Czech Republic.*

Convention No. 11: Right of Association (Agriculture), 1921

Burundi (ratification: 1963)

The Committee notes with regret that for the third year in succession the Government's report has not been received. It must therefore repeat its previous observations which read as follows:

> The Committee notes that the Government had indicated in its previous reports that Legislative Decree No. 1/90 of 25 August 1967 respecting rural associations gives effect to the Convention. It also notes that this text provides that, in the case of public funding, the Minister of Agriculture may establish rural associations (section 1), the membership of such associations is compulsory (section 3) and that the associations' statues are established by the Minister (section 4). It also provides that the obligations of members of these associations include the performance of services in the interest of common enterprise, payment of a single or periodic contribution, the provision of agricultural or livestock products and the observance of rules of cultural or other discipline (section 7), and that failure to fulfil these obligations is punishable by seizure of the member's possessions (section 10).
>
> The Committee considers that the Legislative Decree respecting rural associations which imposes the above obligations on agricultural workers, does not give effect to the Convention. It therefore asks the Government in its next report to indicate the measures that have been taken or are contemplated to secure all those engaged in agriculture the same rights of association and combination as to industrial workers *(Article 1 of the Convention).*

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 12: Workmen's Compensation (Agriculture), 1921

Rwanda (ratification: 1962)

In reply to the Committee's previous comments, the Government reports that the draft Labour Code of May 1997 will include agricultural workers in its scope of application. As a result, once the draft text is adopted, the affiliation of agricultural workers to the social security scheme, in accordance with section 2(a) of the Legislative Decree of 22 August 1974 (regarding the organization of social security), will no longer pose a problem. The Government also indicates that temporary, daily and occasional workers are no longer excluded from the social security scheme since the new draft Labour Code will amend the above Legislative Decree of 22 August 1974 by repealing section 2(b) of this Legislative Decree.

The Committee notes this information with interest. It trusts that in the very near future the Government will adopt this draft Labour Code so that all agricultural employees, including temporary, daily and occasional workers, are covered by a compensation scheme for accidents at work in accordance with *Article 1 of the Convention*. The Committee requests the Government to indicate any progress made in this respect.

* * *

In addition, a request regarding certain points is being addressed directly to *Slovakia*.

Convention No. 13: White Lead (Painting), 1921

Algeria (ratification: 1962)

The Committee takes note of the Government's report. It notes that Executive Decree No. 96-209 of 5 June 1996 fixes the composition and functioning of the National Occupational Safety and Health Council. The responsibilities of the this Council include the production of an annual report on matters of occupational health and safety and occupational medicine. The Committee trusts that the Government will take advantage of the creation of this Council to promote the adoption of the regulations giving effect to the provisions of the Convention. In this regard, the Committee recalls that, in its comments since 1965, it has drawn the Government's attention to the fact that there are no specific provisions in force giving effect to the Convention. The Committee also recalls that, since the Government's report of 1989, in which it announced the adoption of Act No. 88.07 of 26 January 1988 on Occupational Health and Safety and Occupational Medicine, the Government had committed itself to adopting implementing texts with a view to giving effect to the provisions of this Convention, among others. In its last report, the Government recalled what it had already stated in 1995 with regard to the priority which it was giving to other fundamental texts owing to the necessities arising from the social and economic reforms introduced after 1989.

The Committee hopes that the necessary measures will be taken in the very near future to ensure application of *Article 1 of the Convention* (prohibition of the use of white lead and sulphate of lead in the internal painting of buildings), *Article 2* (regulation of the use of white lead in artistic painting), *Article 3* (prohibition of the employment of males under 18 years of age and of all females in any painting work involving the use of white lead) and *Article 5* (regulation of the use of white lead in painting work for which its use is not prohibited). As regards the establishment of statistics on the rate of morbidity and mortality due to lead poisoning, the Committee notes the Government's information to the effect that the National Social Insurance Scheme has been apprised of the question of statistics laid down in *Article 7* with a view to the implementation of this Article.

The Committee requests the Government to indicate any progress made in this area and to provide a copy of the relevant text as soon as it has been adopted.

The Committee again expresses the firm hope that the Government will do everything possible to take the necessary measures in the near future.

[The Government is asked to report in detail in 1999.]

Iraq (ratification: 1966)

Article 7 of the Convention. The Committee notes the information provided by the Government according to which statistics concerning lead poisoning among working painters are not available.

For several years now, the Committee has recalled that *Article 7* of the Convention provides that statistics as to morbidity and mortality with regard to lead poisoning among working painters shall be obtained. In previous comments, the Committee had noted that section 8(a) of the Instructions for the Prevention of Lead Poisoning among Painting Workers provides that cases of lead poisoning shall be reported and statistics kept and that, under section 9, the Department of Occupational Health and Safety in the Ministry of Labour is responsible for supervising the implementation of the instructions. In its report of 1993, the Government had indicated that cases of lead poisoning shall be reported to the Labour Inspectorate and that the Ministry of Health represents the competent authority responsible for keeping statistics concerning morbidity and morality due to lead poisoning, but that no such statistics were available. In its latest communication of 1997, the Government continues indicating that no statistics regarding lead poisoning among working painters are available. The Committee hopes that the Government will take the necessary measures to apply this Article of the Convention and will collect data to obtain statistics with regard to lead poisoning among working painters as to morbidity and mortality, and to ensure full implementation of *all* Articles of the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Azerbaijan, Benin, Cambodia, Cameroon, Comoros, Croatia, Cuba, Finland, Lao People's Democratic Republic, Luxembourg, Mali, Malta, Mauritania, Senegal, Suriname, Venezuela.*

Convention No. 14: Weekly Rest (Industry), 1921

Bolivia (ratification: 1954)

The Committee notes the indications contained in the Government's response to its previous comments and, in particular, the Government's statement to the effect that it will duly take into account the Committee's comment, in particular in respect of the application of Convention No. 14, during its revision of the General Labour Law. The Committee trusts the Government will provide full information in its next report in respect of the questions raised in the Committee's previous observation which read follows:

> In earlier comments, the Committee noted that under section 31 of Decree No. 244 of 1943 (a regulation issued under the General Labour Law), an employer may grant to a worker, in the event of work on the weekly rest day, either compensatory rest or

compensatory remuneration. In a report received in February 1991, the Government indicated that the General Labour Law was in the process of revision with the technical assistance of the ILO. In its report for 1994 on the application of several Conventions, including Convention No. 14, the Government indicates there have been no legislative changes.

The Committee must recall that *Article 5 of the Convention* provides for, as far as possible, compensatory periods of rest in cases where exceptions have been made regarding the right to weekly rest. In this regard, the Committee once again points out that section 31 of Decree No. 244 allows more latitude to the employer than is envisaged under the Convention. It hopes that the new legislation will be adopted as soon as possible, with a provision to ensure that workers employed on a weekly rest day are granted a compensatory rest. It requests the Government to indicate the progress achieved in this respect and to supply a copy of the relevant text when it is adopted.

The Committee also requests the Government to refer to the comments that it has made under Convention No. 106.

The Committee again reiterates its hope that the Government will make every effort to adopt the necessary measures in the very near future.

Turkey (ratification: 1946)

The Committee takes note of the information contained in the Government's last report and the observations made by the Confederation of Turkish Employers' Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-IŞ).

The Committee notes the information, provided by the Government in reply to its previous observation, on the working of the inspection services and the number of contraventions reported. The Committee also takes note of the allegations made by the TÜRK-IŞ of inadequate monitoring of the application of the Convention in terms of the number and nature of the inspections, which do not cover certain categories of workers, in particular domestic workers and illegal workers. The Government is asked to provide its own comments on the allegations made by the TÜRK-IŞ.

To help it assess the manner in which effect is given to the provisions of the Convention, the Committee requests the Government to provide detailed information on the practical application of the Convention, in accordance with *points III and V of the report form*, and to indicate, where appropriate, whether courts of law or other tribunals have given decisions involving questions of principle relating to the application of the Convention, in accordance with *point IV*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Bahrain, Comoros, Ethiopia, Poland, Solomon Islands*.

Information supplied by *Botswana* in answer to a direct request has been noted by the Committee.

Convention No. 16: Medical Examination of Young Persons (Sea), 1921

Requests regarding certain points are being addressed directly to the following States: *Guinea, Nicaragua, Panama, Romania, Russian Federation*.

Convention No. 17: Workmen's Compensation (Accidents), 1925

New Zealand (ratification: 1938)

With reference to its previous comments, the Committee notes the information provided by the Government in its report. The Committee also notes the new observations submitted by the New Zealand Council of Trade Unions (NZCTU) and the New Zealand Employers' Federation (NZEF) as well as the Government's response to these observations.

Article 9 of the Convention. The Government states that the amendments made in 1996 to the Accident Rehabilitation and Compensation Insurance (ARCI) Act of 1992 enable a more flexible approach to the reimbursement of medical costs, aids and appliances. Medical treatments are now split into two categories: acute treatment and elective treatment. Acute treatment is provided through a combination of public hospitals, free of charge to the injured worker, and the health care provider (doctors, physiotherapists, chiropractors), for which the injured worker is still required to make a contribution. With regard to elective treatments, as a consequence of legislative amendments adopted in 1996, the injured worker may choose to seek this class of treatment under the regulation system under which injured workers are required to pay part of the costs, or under a system of contracts between the treatment provider and the ACC at no charge to the injured worker. The Government specifies in this regard that over half of elective treatment is now provided under contracts and that the proportion of elective treatment being provided under contract continues to increase.

The NZCTU acknowledges that progress has been made to ensure greater conformity with the Convention through the introduction of a system of contracts between the health care provider and the ACC for elective treatments. Nevertheless, the NZCTU notes that, on the one hand, this system concerns only 50 per cent of treatments and, on the other, that victims of industrial accidents are still required to pay for acute treatment when this treatment is not available in public hospitals. The NZCTU states that despite the assurances given by the Government, the Government shows that it is not prepared to give full effect to the provisions of the Convention.

The Committee notes this information. It notes that the measures adopted have enabled a certain amount of progress to be made in the respect that acute treatment provided in hospitals in the event of an industrial accident, in particular, is now free of charge to the injured worker. Nevertheless, it does not appear clearly, from the information provided by the Government and the NZCTU, that the injured worker continues to pay for acute treatment in the event the worker is not hospitalized. In this respect, the Committee would be grateful if the Government would specify, on the one hand, whether public hospitals are able to provide integral acute treatment including urgent out-patient treatment and, on the other hand, to what extent and under which circumstances the injured worker has to seek acute treatment from health care providers (doctors, physiotherapists, chiropractors). Moreover, the Committee notes that as regards other treatments which include non-urgent treatments, according to the annual report of the ACC, if the injured worker chooses to receive these treatments under the new contract system between health care providers and the ACC, they will be provided free of charge. The Committee would be grateful if the Government would indicate, on the one hand, whether this new system is sufficiently developed to respond to the needs of all injured workers who wish to subscribe to this system and, on the other hand, whether all medical, surgical and pharmaceutical assistance recognized to be necessary to the injured worker following an industrial accident are offered by health care providers under this system. In this context, the Committee expresses its concern that, according to its report, the Government intends to propose further amendments to the legislation, one of which is that injured workers will be required to pay a limited co-payment in respect of treatment costs except acute treatment which is provided in a public hospital. The Committee recalls that *Article 9* of the Convention states that medical, surgical and pharmaceutical aid recognized as being necessary in consequence of industrial accidents shall be defrayed either by the employer, by accident insurance institutions, or by sickness or invalidity insurance institutions irrespective of the type of aid or the establishment providing medical care as provided for under this Article of the Convention. Under these circumstances, the Committee hopes that the Government will re-examine this question in light of the Committee's comments and requests the Government to provide detailed information in respect of the measures adopted or envisaged in order to ensure full conformity with this provision of the Convention.

Article 10. In response to the Committee's previous comments, the Government states that the ACC now provides aids and appliances under a general *discretion* based on the persons needs. The Committee recalls that under *Article 10* of the Convention, injured workmen *shall be entitled* to the supply and normal renewal, by the employer or insurer, of such artificial limbs and surgical appliances as are recognized to be necessary. The Committee would be grateful if the Government would specify, on the one hand, the conditions under which artificial limbs and surgical appliances are supplied and renewed and to indicate, on the other hand, whether injured workers are still required to pay for such artificial limbs and appliances.

Saint Lucia (ratification: 1980)

The Committee notes with regret that once again the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 7 of the Convention.* The Committee notes that Regulations No. 37 of 1984 do not, as set out in this provision of the Convention, provide for the provision of additional compensation to victims of accidents who suffer incapacity and require the constant help of another person. The Committee therefore hopes that the Government will take the necessary steps to give effect to this provision of the Convention.
>
> *Articles 9 and 10.* In its previous comments, the Committee drew the Government's attention to the fact that, contrary to this provision of the Convention, section 52(1) of the National Insurance Act No. 10 of 1978 limits to a prescribed amount the right to medical assistance and the provision of artificial limbs. In view of the fact that the Regulations issued under the Act do not appear to contain provisions in this connection, the Committee hopes that the Government will take the necessary steps to secure the application of these Articles of the Convention, which do not fix any maximum amount as regards such benefits.
>
> The Committee also requests the Government to indicate whether the medical treatment set out under section 52(1) of Act No. 10 of 1978 also covers pharmaceutical assistance and the supply, repair and renewal of artificial limbs, in accordance with these provisions of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Uganda (ratification: 1963)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

Article 5 of the Convention. The Committee notes the information contained in the Government's report that the revised legislation on workmen's compensation takes account of the provisions of *Article 5* of the Convention. The Committee cannot but reiterate the hope that this legislation will be adopted in the near future and that it will ensure, in accordance with this provision of the Convention, that employment injury compensation for permanent incapacity or death is paid in the form of periodical payments throughout the contingency unless the competent authority is satisfied that a lump-sum payment will be properly utilized. The Committee asks the Government to indicate any progress made in this respect and to provide a copy of the new law as soon as it has been adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *New Zealand, Philippines, Sao Tome and Principe, Slovakia.*

Convention No. 19: Equality of Treatment (Accident Compensation), 1925

Malaysia

Peninsular Malaysia (ratification: 1957)

Sarawak (ratification: 1964)

The Committee notes the Government's report and the discussion which took place at the 1998 Conference Committee on Malaysia's application of Article 6, paragraph 1(b), of the Migration for Employment Convention (Revised), 1949 (No. 97), raising similar problems to those considered under this Convention.

Article 1, paragraph 1. In its previous comment, the Committee drew the Government's attention to the fact that the transfer of foreign workers, working in the private sector, from the Employees' Social Security Scheme (ESS) to the Workmen's Compensation Scheme was not in conformity with this provision of the Convention. A review of the two schemes had in fact shown that the level of benefits in case of industrial accident provided under the ESS was substantially higher than that provided under the Workmen's Compensation Scheme. In this respect, the Committee notes with interest that the Government has now reported that it is envisaging reviewing the present situation regarding the coverage of foreign workers under the ESS and that it is proposing amendments to the Social Security Act of 1969 in this regard.The Committee hopes that in its next report the Government will be able to indicate the progress made in amending the Social Security Act in order to ensure that foreign workers will receive the same workmen's compensation benefits as those paid to nationals in conformity with this provision of the Convention. Please supply copies of the proposals made or the amended law, if adopted, in the next report.

[The Government is asked to report in detail in 2000.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Burundi, China, Croatia, Czech Republic, Djibouti, Guinea-Bissau, Nicaragua, Nigeria, Saint Lucia, Senegal, Yemen.*

Information supplied by *Sudan* in answer to a direct request has been noted by the Committee.

Convention No. 20: Night Work (Bakeries), 1925

Bolivia (ratification: 1973)

The Committee notes the Government's short response to its observation of 1996 and regrets that the draft General Labour Law, prepared with the technical assistance of the ILO over a period of years, has not been retained by the Government. Consequently, the Committee regrets that no progress has been made on bringing certain points of the current labour legislation into conformity with the provisions of the Convention.

The Committee is bound to recall that it has commented over very many years on the non-conformity of section 60 of Regulation No. 244 of 23 August 1943, with the provisions laid down in *Article 2 of the Convention* which define the period of night, during which work is prohibited, as a period of at least seven consecutive hours, which shall include the interval between 11 p.m. and 5 a.m. or, in certain justified instances, between 10 p.m. and 4 a.m. The Government should, therefore, take adequate measures to ensure that the period when work is prohibited includes not only that provided for in section 60 of the above Regulation, but also the hour following this period to ensure a period of at least seven consecutive hours. The Committee trusts that the Government will take the necessary action to this effect in the very near future.

Convention No. 22: Seamen's Articles of Agreement, 1926

Liberia (ratification: 1977)

The Committee notes with regret that once again the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information contained in the Government's report, which refers to Liberian Maritime Law and the corresponding regulations, as amended up to 1992.
>
> *Article 3, paragraph 4, of the Convention.* The Committee notes that under Regulation 10.320(1) a foreign language version of the articles of agreement may be appended to the English version. The Committee points out that the above-mentioned regulation goes in the direction of meeting the requirement of this provision of the Convention. However, in order to ensure full compliance with the Convention in the case of a seafarer who does not understand English, it is necessary to have the contract written in a language he understands and that, if need be, the representative of the competent authority or the master, in the presence of witnesses, should explain the contents of the contract. The Committee asks the Government to indicate the measures taken or under consideration to ensure that full effect is given to this provision of the Convention.
>
> *Article 9, paragraph 2.* The Committee notes that, under section 323(4) of Liberian Maritime Law, where articles of agreement are not for a stated period they expire at the end of one year, provided that at least five days' prior notice has been given. It draws the Government's attention to the fact that national law must prescribe the manner of giving notice, so as to preclude any subsequent dispute between the parties. Please provide all useful information on this matter.
>
> *Articles 13 and 14, paragraph 2.* Please indicate the measures taken or contemplated to ensure the application of these provisions of the Convention.
>
> *Point V of the report form.* Please give a general appreciation of the manner in which the Convention is applied.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Mexico (ratification: 1934)

Article 9, paragraph 1, of the Convention. For several years, the Committee has been pointing out that section 209(III) of the Federal Labour Act, which provides that seafarers may not be discharged when the ship is abroad, is contrary to this provision of the Convention, which provides that an agreement for an indefinite period may be terminated by either party in any port where the vessel loads or unloads, provided that the notice specified in the agreement which shall not be less than 24 hours shall have been given. The Committee notes the Government's opinion expressed in its report that this Article of the Convention coincides with the provisions of section 196 of the Federal Labour Act and that the eighth clause of collective agreement CC-713-87 gives effect to this provision of the Convention. The Committee notes that section 196 refers to the port of return of the seafarer when the articles of agreement are completed, and is therefore related to the repatriation of the seafarer, but that it does not cover the possibility provided by this provision of the Convention for both parties to terminate an agreement for an indefinite period in any national or foreign port where the vessel loads or unloads. With regard to the clause aforementioned, the Committee is bound to point out once again that this refers exclusively to the conclusion of an agreement "for a voyage" and not "for an indefinite period", as set out in *Article 9, paragraph 1,* of the Convention.

The Committee once again urges the Government to take the necessary measures to amend the legislation in order to bring it into compliance with this provision of the Convention.

The Committee is raising other matters in a request addressed directly to the Government.

Panama (ratification: 1970)

The Committee notes the adoption of Legislative Decree No. 8 of 26 February 1998 issuing the Regulations respecting maritime labour at sea and on waterways. It also notes Legislative Decree No. 7 of 26 February 1998 establishing the Maritime Authority of Panama, unifying various maritime functions of the public administration and adopting other provisions. The Committee requests the Government to supply detailed information on the application in law and practice of each of the Articles of the Convention, with particular reference to *Articles 3, paragraph 4, and 9, paragraph 1,* which had been the subject of its previous comments.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *China, Estonia, Luxembourg, Mexico.*

Convention No. 23: Repatriation of Seamen, 1926

Ireland (ratification: 1930)

In its previous report the Government indicated that it was preparing to amend its legislation, including the 1906 Merchant Marine Act, to ensure the right to repatriation of seamen who are landed in a Commonwealth country, or foreign seamen who are engaged at a foreign port and landed at a different port. The Committee notes the information provided by the Government in its last report to the effect that the legislation has not yet been amended. It recalls that the Government indicated in successive reports in 1995 and 1996 that it hoped to have the amendments adopted within a short time. The Committee trusts that the Government will be able to indicate in the very near future that the legislation has been amended.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *China, Cyprus, Estonia.*

Convention No. 24: Sickness Insurance (Industry), 1927

Colombia (ratification: 1933)

The Committee notes the adoption of the new general social security system for health care, for which the structure and rules are established by Act No. 100 of 1993 on the social security system, as amended by Decree No. 1298 of 22 June 1994 and the regulations issued thereunder (Decrees Nos. 1919 and 1938 of 1994). The objective of the system is to establish conditions under which the whole population has access to the public health service. Health Care Providers (EPS) are responsible for the affiliation and registration of insured persons and the collection of contributions. In exchange, they are under the obligation to provide insured persons with the benefits guaranteed under the Compulsory Health Plan (POS) either directly or through institutions which provide health care services. The EPS may be public bodies, such as the Social Security Institute, or private or mixed entities and have to be recognized by the National Health Authority, which is the supervisory and inspection body for the system. Furthermore, workers must be able to freely choose the EPS under which they wish to be insured.

The Committee notes that the Government's latest report only contains general comments on the new health system. In these conditions, it once again requests the Government to supply detailed information on the impact of the new legislation on each of the Articles of the Convention.

With particular reference to *Article 2 of the Convention*, the Committee has been drawing the Government's attention for a number of years to the need to extend the application of the legislation giving effect to the Convention to the whole of the national territory. In its latest report, the Government states that the objective of the health branch of the general social security system established by Act No. 100 of 1993 is to enable all residents on the national territory to have access to the Compulsory Health Plan by the year 2001. In these conditions, the Committee would be grateful if the Government would provide statistical information on the coverage in practice of the general social security system in the field of health care as regards the contributory scheme and if it would indicate in particular the percentage of workers covered by the Convention who benefit from the POS in the context of the contributory scheme in relation to the total number of such workers.

Djibouti (ratification: 1978)

The Government refers to the Committee's previous comments and indicates in its reports that Djibouti enjoys one of the most effective social protection schemes in East Africa which is organized around two complementary structures, the Social Benefits Fund

(CPS) and the Inter-enterprise Medical Service (SMI), and financed by employers' and workers' contributions deducted from wages.

The Committee notes this information and also Act No. 135/AN/3rdL of 6 May 1997 establishing the Social Protection Organisation (OPS) which appears to have replaced the CPS. The Committee notes that the OPS does not cover sickness insurance and that, whereas medical care granted to workers in case of illness within the SMI scheme is free of charge, cash benefits paid to workers in case of illness are the direct responsibility of employers. In this respect, the Committee is bound to recall to the Government that cash benefits due, by virtue of *Article 3 of the Convention read in conjunction with Article 1*, to an insured person who is rendered incapable of work by reason of the abnormal state of his bodily or mental health must be financed by a compulsory insurance system and must not be the direct responsibility of the employer. Under these conditions, the Committee hopes that the Government will adopt the necessary measures to ensure that sickness benefits shall be guaranteed to all workers who are covered by the Convention in the framework of a sickness insurance scheme, in conformity with the provisions of the Convention. In this respect, the Committee proposes that the Government may wish to accept the offer of ILO technical assistance.

The Committee moreover requests the Government to transmit with its next report a copy of the legislation in force respecting the functioning of the SMI.

Peru (ratification: 1945)

In its previous comments, the Committee had requested the Government to provide detailed information concerning the legislation and the practice which give effect to the Convention, taking account of the implementation of a new health care system as a consequence of the adoption in 1997 of Act No. 26790, respecting the modernization of the social security system in the health field, and of Supreme Decree No. 009-97-SA regulating the above Act, which came into force in 1997. The Committee notes the general information provided by the Government in its report as well as the observations communicated by the Unitary Trade Union of Technicians and Auxiliary Specialists of the Peruvian Institute of Social Security alleging in particular that Act No. 26790 and its Regulation are designed to dismantle the social security system and the Peruvian Institute of Social Security (IPSS) by placing them at the service of private individuals and foreign capital. In its response, the Government refutes these allegations and indicates that it has no intention of privatizing the social security system and that the IPSS should be considered as the administrator of the general social security system and the enterprises providing health care which workers may choose if they so wish.

The Committee recalls that the Act modernizing the social security system in the health field and its implementing Decree are designed to regulate the introduction of the private sector into the field of health care. The health care services provided by the IPSS are complemented by the health care plans and programmes of the Health Care Providers (EPS). These may be enterprises or public or private institutions which are independent of the IPSS. Nevertheless, under the new system the IPSS alone continues to be responsible for disbursing cash benefits and providing complex health care for illnesses such as chronic illnesses. With regard to other health care services, these may be provided either by the IPSS or employers themselves through their own health care services or health care plans, which have been contracted out to the EPS. Consequently, under the new system workers who subscribe to private health care programmes may receive cash benefits and complex health care *(capa compleja)* from the IPSS and normal health care *(capa simple)* from the EPS (or the health care service provided by the employer).

The Committee notes that fundamental changes have been made to the health care service by the new legislation. Consequently, it requests the Government to provide additional information in its next report, as required by the report form, in respect of the impact of the legislation and national practices with regard to the application of the Convention. The Committee in particular draws the Government's attention to the following points.

Article 2 of the Convention. In its previous comments, the Committee had referred to the need to take practical measures to ensure that health care services are made available throughout the whole of the national territory to enable all workers who are covered by the Convention to be protected. The Committee notes in this regard that under section 3 of the Act respecting the modernization of the social security system in the health field the regular insured persons as well as voluntary insured persons and their beneficiaries are covered by the health care insurance system. The regular subscribers, whose membership of the system is compulsory, include in particular active dependent workers as well as members of workers' cooperatives. The Committee would be grateful if the Government would indicate whether in practice all workers covered by the Convention and, in particular, apprentices, are now covered by the health care insurance system provided for under Act No. 26790 of 1997. The Committee also requests the Government to provide detailed information relative to the geographic coverage of this new health care system in specifying the regions which are not yet covered by the system.

Article 6, paragraph 1. The Committee notes that under sections 13 and 14 of the Act respecting the modernization of the social security system in the health field, the EPS are enterprises or public or private institutions independent of the IPSS, placed under the supervision of the EPS inspectorate and whose sole purpose is to offer health care services through its own infrastructure or those of a third party. The Committee recalls that under *Article 6, paragraph 1,* of the Convention, health care insurance must be administered by self-governing institutions, under the administrative and financial supervision of the competent public authority and *shall not be carried out with a view to profit*. Institutions founded by private initiative must be specially approved by the competent public authority. Under these conditions, the Committee would be grateful if the Government would indicate the manner in which it gives effect to this provision of the Convention.

Article 6, paragraph 2. The Committee would be grateful if the Government would provide detailed information in respect of the participation of insured persons in the management of the health care system, in particular as regards the EPS and health care services provided by the employer. The Committee would be grateful if the Government would indicate whether the insured persons are represented in the decision-making bodies of the EPS inspectorate.

Article 7, paragraph 2. The Committee would be grateful if the Government would indicate the manner in which effect is given to this provision of the Convention and the manner in which the national legislation provides for a financial contribution by the public authority to the health care system.

Moreover, the Committee refers to its comments in respect of the Social Security (Minimum Standards) Convention, 1952 (No. 102).

* * *

In addition, a request regarding certain points is being addressed directly to *Colombia*.

Convention No. 25: Sickness Insurance (Agriculture), 1927

Colombia (ratification: 1933)

The Committee takes note of the adoption of a new General System of Social Security in the Health Branch, the structure of which was established by Act No. 100 of 1993 respecting the social security system as amended by Decree No. 1298 of 22 June 1994 and its implementing regulations (Decrees Nos. 1919 and 1938 of 1994). In this regard, the Committee refers to its comments concerning Convention No. 24.

In addition, the Committee hopes that the Government will indicate whether the General System of Social Security in Health has entered into force for agricultural workers, bearing in mind section 703 of Decree No. 1298 according to which employers and workers in agriculture and stock-raising are required to affiliate to the bodies responsible for providing social security services in health where such services are provided in the regions concerned. If this is the case, the Committee would be grateful if the Government would provide statistics on the coverage of the agricultural sector by the General System of Social Security in Health and to indicate in particular the percentage of workers covered by the Convention who are entitled to services on a contributory basis under the Compulsory Health Plan.

Peru (ratification: 1960)

See under Convention No. 24.

Convention No. 26: Minimum Wage-Fixing Machinery, 1928

Angola (ratification: 1976)

The Committee notes the information contained in the Government's report in response to its previous comments.

Article 3, paragraph 2(2), of the Convention. In its previous comments, the Committee noted the Government's statement to the effect that the practice of full consultation between the social partners has not been established and wage negotiations between workers and employers have only been held following strikes or the threat thereof. The Government has fixed a minimum wage level equivalent to US$20 in readjusted Kwanzas and the Committee requests the Government to shortly take the appropriate measures to ensure the participation, in equal numbers and on equal terms, of employers' and workers' representatives in the system of fixing minimum wages.

The Government indicates, in its report, that there is no minimum wage fixed on the basis of consultations with social partners. It also states that wages are currently fixed administratively, but that negotiation is under way between the Government and social partners, employers and workers, with a view to fixing the minimum wage.

The Committee notes that since 1989, the national system of fixing minimum wages is inadequate, particularly in practice, which prevents the national system of fixing minimum wages from conforming with the provisions of the Convention. The Committee recalls that the provisions of the Convention require consultation with the organizations of the employers and the workers concerned prior to the fixing of the minimum wage rate. The Committee hopes that the Government will not fail to take the necessary measures in the near future to ensure the participation, in equal number and on equal terms, of employers' and workers' representatives in the system of fixing minimum wages.

Article 3, paragraph 2(3), and Article 4. The Committee hopes that the Government will shortly provide a copy of the most recent Decree fixing the minimum wage, and indicate the relevant legislative provisions or regulations which ensure the observance of the minimum wage, such as: the possibility of recovering, by judicial or legalized proceedings, the amount by which the workers have been underpaid in the event that the wage rate received is less than the minimum wage, as well as the sanctions envisaged in the event of infringement of the provisions concerning the minimum wage.

[The Government is asked to report in detail in 1999.]

Argentina (ratification: 1950)

1. The Committee notes the detailed information provided by the Government in reply to its previous comments, and the comments made by the United Maritime Workers Trade Union (SOMU) concerning the failure to comply with the provisions of the Convention with regard to fishing workers.

2. According to the SOMU, the basic wage rates of fishing workers are drastically low and well below the parameters established by the National Council for Employment, Productivity and the Minimum Adjustable Living Wage, which have been in force since 1 January 1993, and which set the figure of $200 a month for all personnel who work the statutory period of eight hours a day. Taking into account the fact that the minimum wage can be fixed by collective agreement, SOMU requested the Ministry of Labour to convoke the employer's representatives to collective negotiations with the principal objective of adjusting the current basic wage rates for fishing workers.

3. In view of the fact that the Government's report does not reply to the comments made by the SOMU, the Committee requests the Government to supply information on the measures which have been adopted or are envisaged to give effect to the request of the SOMU and thereby guarantee the payment of the minimum wage to fishing workers.

4. The Committee is also addressing a request directly to the Government on other matters.

[The Government is asked to report in detail in 1999.]

Belgium (ratification: 1937)

1. The Committee notes that the Government refers to a report by the Organisation for Economic Cooperation and Development (OECD) concerning the economic situation in Belgium (cf. ECO/EDR(97)3 produced by the Economic and Development Review Committee) which, among other things, recommends the abolition of automatic indexation and allowing payment of wages below the guaranteed minimum level. The Government considers that it might come under pressure to denounce this Convention owing to the general state of its economy, if it were obliged to follow the principal recommendations contained in the OECD report. The Government considers that the measures advocated in the report would certainly not be compatible with the Convention without a very broad interpretation being given to the terms *general or particular authorization of the competent authority (Article 3, paragraph 2(3), of the Convention)*, which in any case covers only the minimum wages provided for in collective agreements.

2. The Committee recalls that the Convention provides for a framework (the wage-fixing machinery), the general manner in which this machinery operates, and consultation and participation of employers' and workers' organizations on an equal footing. It is the responsibility of the Government ratifying the Convention to adopt the necessary measures that will allow this general framework to function. In this regard, the Committee refers

in particular to paragraph 431 of its 1992 General Survey on minimum wages, according to which any adverse effect on employment may result not so much in the obligations imposed by the Conventions or to establish minimum wage-fixing machinery as from the actual amount of the minimum wage which is determined not by the Conventions themselves but by agreement between the parties or by decision of the competent authority in consultation with the parties concerned. This General Study also recalls that such adverse effect is likely only in so far as the minimum wage is unduly high in relation to what economists call equilibrium wage levels.

3. The Committee therefore, while noting the Government's concerns, asks it to provide information on: (i) measures taken or contemplated to modify the minimum wage-fixing machinery or the mode of operation of that machinery; or (ii) any other measures that would affect the application of the Convention.

[The Government is asked to report in detail in 2000.]

Chad (ratification: 1960)

The Committee notes the Government's indication that, despite the weight of structural adjustment, efforts have been made to solve the problems related to the minimum interoccupational guaranteed wage rates (SMIG) and the guaranteed minimum agricultural wage rates (SMAG). The Committee notes, however, that the Government's report does not reply to the matters raised in its previous comments. It must, therefore, repeat its previous observation as follows:

> The Committee notes the information supplied in the Government's report in reply to its previous comments, as well as the observations made by the Trade Unions' Confederation of Chad (CST). It also notes the discussion held at the Conference Committee in 1993 and the conclusions and recommendations of the Committee on Freedom of Association at its 305th Session (November 1996; Case No. 1857) approved by the ILO Governing Body, as well as the follow-up to the matter (see 306th Session (March 1997) and 307th Session (June 1997)).
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> The Committee also notes the Government's reply to the CST's observations which was received late.
>
> *Article 3 of the Convention.* In its previous comments, the Committee noted the Government's statement that the proposed increase of minimum wages fixed in 1978 has been shelved as part of the structural adjustment programme imposed by the IMF and the World Bank. The Committee referred to paragraphs 428 and 429 of the 1992 General Survey on minimum wages which state that one of the fundamental objects of the instruments in question is to ensure to workers a minimum wage that will provide a satisfactory standard of living for them and their families, and that this fundamental objective should constantly be borne in mind, especially in certain countries where structural adjustment programmes are being applied. The Committee requested the Government to indicate any developments in this respect and to provide information on the participation of the employers and workers concerned by decisions relating to the fixing of minimum wage rates, including decisions to freeze minimum wages.
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> The Committee notes that the minimum interoccupational guaranteed wage rates (SMIG) and the guaranteed minimum agricultural wage rates (SMAG) of 1978 were adjusted on 1 January 1995 and on 1 January 1996, along with the relevant wage scales. It notes that since the entry into force of the new Labour Code, minimum wage rates are fixed by joint agreement of the employers' and workers' representative occupational organizations (see section 249 of Act No. 38/PR/96 of 11 December 1996 issuing the Labour Code). The Government stipulates that these rates are determined by a joint committee composed of employers and workers.
>
> Nevertheless, the CST considers that it was excluded by the Government from all joint collective negotiations relating to fixing of minimum wages.

In reply to these observations, the Government considers that this exclusion is owing simply to the fact that the negotiations had begun before the CST was founded and that, accordingly, only when the term of office of the Higher Committee for Labour and Social Security had expired could it be reconstituted to include the CST; there was therefore no question of discriminating against the CST in this matter.

The Committee recalls that in its recommendations when considering the complaint of the CST against the Government of Chad in a communication of 30 September 1995, the Committee on Freedom of Association requested the Government, in regard to participation of the CST on joint or tripartite bodies, if there was any doubt as to the representativity of the CST, to undertake an objective and impartial determination of representativity and to take the appropriate measures in the event that it turned out to be the representative union. Taking into account the information supplied by the CST in a communication of 19 December 1996, the same Committee noted with interest that the situation had improved, while requesting the Government to keep it informed on the matter.

The Committee hopes that the Government will shortly be in a position to supply detailed information on the designation of members of the joint committee responsible for fixing minimum wages, and also on the issue of CST participation in joint committee activities.

Article 4, paragraph 1, and Article 5, read in conjunction with point V of the report form. The Committee notes the Government's statement that the country's economic difficulties prevent it from providing labour inspection services with the resources to fulfil their function of monitoring the application of laws, regulations and collective agreements concerning workers; it is desperately short of such resources. In addition, according to the CST, the salary scales following rises in the rates of the SMIG and SMAG which were rendered effective by Decree No. 313bis/PR/95 of 7 April 1995, approving and issuing the new salary scales of 7 April 1995, are not applied or executed by public, parapublic and private employers, but there is no Government reaction to this.

In reply to these observations, the Government considers that, first, the new scales are applied in the private sector, even though some minor problems exist here and there. Moreover, the Government constantly reminds employers of their obligations in this regard, as well as of the need to make offending employers aware of the application of the new scales. Furthermore, in the public sector, because of the financial difficulties of the country and the undertakings made to the financial backers for controlling the amount spent on salaried employment until 1998, it is only after this date that workers on the whole will experience improved living conditions.

The Committee recalls that the provisions of the Convention make it incumbent on States to take the necessary steps to establish a system of supervision and sanctions to ensure that minimum rates of wages are paid. It requests the Government to indicate the measures taken or contemplated in regard to employers in the private sector who violate the regulation on minimum wages.

Furthermore, the Committee refers once again to its preceding comments in which it recalled the indications given in paragraphs 428 and 429 of its 1992 General Survey on minimum wages that one of the fundamental objectives of the instruments in question is to ensure to workers a minimum wage that will provide a satisfactory standard of living for them and their families, and that this fundamental objective should constantly be borne in mind, especially in countries where structural adjustment programmes are being applied. It hopes that this objective will be taken into account when the next new wage scales in the agricultural and non-agricultural sectors are fixed, with the participation of the employers and workers concerned.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

[The Government is asked to report in detail in 1999.]

Guinea (ratification: 1959)

The Committee notes the information provided in the Government's report in reply to its previous comments.

In its previous observation, the Committee noted the comments of the General Union of Workers of Guinea (UGTG) to the effect that, in its view, the wage scales for public sector employees were not sufficient to cover the living costs of a worker's family of five members and that the new Labour Code of 1988 was applied without any subsequent text having been issued. The Committee also noted that, under the terms of section 211 of the Labour Code, the minimum hourly wage rate is fixed by decree. It also noted the Government's indication that it intends to promote free wage bargaining in enterprises and to take account of the results of such bargaining in fixing a guaranteed inter-occupational minimum wage. The Committee therefore asked the Government to provide detailed information on the application of the minimum wage-fixing machinery provided for in the new Code, particularly as regards consultation and participation of employers' and workers' organizations in equal numbers and on equal terms *(Article 3, paragraph 2 of the Convention)*. It also asked the Government to provide information on the results of the application of this machinery in accordance with *Article 5*, and in particular copies of decrees issued under section 211 of the Labour Code.

The Government, in reply to these comments, notes that, contrary to the claims of the UGTG, the public sector is still covered by the Public Service Regulations and as such is in a different category from the private and mixed sectors, which are governed by the Labour Code. The wage scales are applied to public servants, but not to the occupational branches in the private sector, where completely free wage bargaining between employers and employees prevails. In the interests of promoting free wage bargaining in enterprises, the Government has proceeded to set up machinery for the various sectors. Collective agreements and accords have thus been concluded (public works, buildings, agricultural engineering and the like; mining, quarries and chemical industries; banking and insurance) or are under discussion (hotels and similar establishments). With regard to the public servants and contract staff employed by the Government, salaries are based on a single grade-related scale in which the value of each salary step is fixed by decree following negotiations between the Government and public service unions.

The Committee notes this information. It asks the Government once again to provide detailed information on the application of the minimum wage-fixing machinery provided for in the Labour Code, particularly as regards consultation and participation of employers' and workers' organizations in equal numbers and on equal terms *(Article 3, paragraph 2, of the Convention)*. It also asks the Government to provide information on the results of the application of this machinery in accordance with *Article 5*, and in particular copies of decrees issued under section 211 of the Labour Code.

Morocco (ratification: 1958)

The Committee notes the information contained in the Government's report in response to its previous comments.

Article 3, paragraph 2(1) and (2) of the Convention. In its previous comments, the Committee requested the Government to specify the composition and activities of the tripartite committees established within the framework of dialogue between the Government and the trade unions, to provide the legislative texts relative to their establishment and detailed information in respect of the activities of the above committees in practice.

In response to these comments, the Government states, in particular, that consultation of the social partners must, in future, take place at the level of the National Committee on Social Dialogue established under the common agreement signed in August 1996 between the Government and the trade union and employers' organizations.

The Committee notes with regret that the Government has not provided the information requested concerning the above tripartite committees (legislative texts, information based on practice). In the light of the fact that the Conference Committee on the Application of Standards and the present Committee have been examining this question since 1992, the Committee trusts that the Government will not fail to provide in the near future detailed information in respect of the National Committee on Social Dialogue established under the joint agreement signed, in August 1996, between the Government and the trade unions and employers' organizations, especially (i) a copy of the said agreement; (ii) a copy of any other text on the composition, the activities and the responsibilities of this committee.

In addition, the Committee will be addressing a direct request to the Government on certain other points.

[The Government is asked to report in detail in 1999.]

Myanmar (ratification: 1954)

The Committee notes the information provided in the Government's report. It also notes the sections concerning the payment of wages in the report of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29).

Article 1, paragraph 1, of the Convention, in conjunction with Article 4. The Committee notes from the Government's report that the extension of the coverage relating to minimum wage fixing will be delayed for a while awaiting the enactment of the new labour law. It also observes that, according to the above Commission of Inquiry's report (paragraphs 473 to 475 and paragraph 512), local people in irrigation projects are denied remuneration and compensation, and are paid only in exceptional circumstances and then below market rates. The Committee recalls the obligation of the ratifying State, under *Article 1, paragraph 1*, of the Convention, to create and maintain a minimum wage fixing machinery for workers employed in certain of the trades or part of trades in which two conditions are fulfilled, namely: (i) the absence of arrangements for the effective regulation of wages by collective agreement or otherwise; and (ii) the existence of exceptionally low wages. The Committee requests the Government to indicate in which respect a minimum wage rate is applicable to local people in irrigation projects, and to indicate, in accordance with *Article 4* of the Convention, the measures taken or contemplated: (i) to ensure, including by means of supervision, inspection and sanctions, that the employers and workers concerned are informed of the minimum wage rates in force and that wages are not paid at less than these rates in cases where they are applicable (*Article 4, paragraph 1*, of the Convention); and (ii) to ensure that a worker to whom the minimum rates are applicable and who has been paid at less than these rates shall be entitled to recover, by appropriate legal means, the amount by which he or she has been underpaid (*Article 4, paragraph 2*, of the Convention).

Article 1, paragraph 2, in conjunction with Article 3. The Committee requests the Government to indicate to what extent the employers' and workers' organizations are involved in the fixing, revision and extension of the minimum wage. It also asks the Government to provide a copy of the new labour law as soon as it is adopted.

[The Government is asked to report in detail in 1999.]

Rwanda (ratification: 1962)

Article 3, paragraph 2(1) and (2), of the Convention. The Committee notes the information provided in the Government's report in answer to previous comments. It notes the Government's statement to the effect that the National Subcommission on Agreements and Salaries, which will be responsible among other things for fixing salaries, will of necessity include representatives of workers and employers. While awaiting the adoption of the draft Labour Code, the representative organizations participated in discussions on wages conducted by the Special Wages Commission.

The Committee hopes that the draft Labour Code will soon be adopted and that the National Subcommission on Agreements and Salaries will be established. It also hopes that the employers' and workers' organizations will participate in the work of the Subcommission on an equal footing.

[The Government is asked to report in detail in 1999.]

Turkey (ratification: 1975)

The Committee notes that the Government's report has not been received. However, it notes the new observation made by the Confederation of Turkish Employers' Associations (TISK) concerning the application of the Convention. In its comments, the TISK states that the Minimum Wage Fixing Board is based on a tripartite structure. It also observes, inter alia, that: (i) since 1989, minimum wage in the agricultural sector is the same as that of industrial and services sectors; (ii) although a period of two years is contemplated by the legislation, the Board meets and determines new minimum wages every year; and (iii) the Board has proposed to the Government the establishment of a tripartite committee, which would carry out work on wage-fixing methods and principles in order to adjust the Minimum Wage Regulation accordingly; this Committee has already been established, but its work has not yet been completed. According to the TISK, the entire legislation, including the Minimum Wage Regulation, does not meet with the requirements of the country and that it impedes harmonization with today's economic and social conditions. The TISK believes that the present minimum wage practice encourages particularly the growth of unemployment and informal sector and weakens the power of trade unions. It requests major changes to be made in the legislation in respect of minimum wage practice, minimum wage fixing and revision, and tax burden on minimum wage.

The Committee notes that, although the observation made by the TISK was supplied with the Government's report for Convention No. 99, the Government does not provide any response to this observation. The Committee requests the Government to provide information as regards this observation, as well as in reply to the Committee's previous observation concerning the points below.

The Committee noted the observation made by the Confederation of Turkish Employers' Associations (TISK) concerning the implementation of the minimum wage provisions in the country. The TISK states that the form and application of the minimum wage regulations, which is based on Labour Act No. 1475/71, has nothing contrary to the Convention. However, it makes various requests for changes to be made in the relevant legislation as concerns: (i) the determination of minimum wages by collective bargaining in the establishments covered by collective labour agreements; (ii) the need for redefinition of the minimum wage; (iii) the criteria for minimum wage determination; (iv) the renewal period for minimum wage; (v) the age limit for minimum wage; (vi) the tax burden on minimum wage; (vii) the relationship between legal fines and minimum wage; and (viii) the need for further consultation of employers' and workers' organizations in the framework of the Minimum Wage Fixing Board.

The Committee noted that the reports do not contain the Government's comments in response to this observation. It requests the Government to provide information in this respect.

Homeworkers and domestic workers. The Committee previously requested the Government to indicate the measures taken to ensure the existence of minimum wage fixing machinery and the effective fixing of minimum wages for categories of homeworkers considered to be workers under the terms of the Code of Obligations. It also requested the Government to indicate the measures adopted to ensure the existence of minimum wage fixing machinery and the effective fixing of minimum wages for domestic workers who respond to the criteria set out in *Article 1, paragraph 1, of the Convention* (absence of arrangements for the effective regulation of wages and the low level of wages).

The Government considered that as the persons under these categories of workers are not covered by Labour Act No. 1475, it is not possible for them to benefit from the minimum wages. Despite being a new form of labour resulting from the developments in technology, on the one hand, and in the labour market, on the other, there is neither any reliable data available to the extent of the practice of such new form of employment nor any legal arrangement regulating them in Turkey. Therefore, the Government has started to study, with an open mind, the measures that can be adopted so as to bring the legislation and related implementation in line with the standards set by the ILO by taking into account all the Committee's comments. Pending the outcome of this undertaking, the Government requested the Committee to postpone taking a stand on this matter.

The Committee notes these indications and requests the Government to provide information concerning this review process so as to bring the legislation and practice for homeworkers and domestic workers into conformity with the Convention.

[The Government is asked to report in detail in 1999.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Barbados, Belarus, Benin, Bulgaria, Canada, Central African Republic, Chile, China, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Fiji, Gabon, Germany, Ghana, Grenada, Guinea-Bissau, Hungary, Ireland, Italy, Jamaica, Luxembourg, Malawi, Mali, Mauritania, Mauritius, Morocco, Nigeria, Norway, Panama, Peru, Rwanda, Senegal, Seychelles, Sierra Leone, Slovakia, Sudan, Switzerland, Togo, Tunisia, Uganda, Venezuela, Zimbabwe.*

Convention No. 27: Marking of Weight (Packages Transported by Vessels), 1929

Sweden (ratification: 1932)

The Committee notes the comments made by the Swedish Transport Workers' Union indicating its agreement with the Government's opinion concerning the application of provisions related to the marking of weight transported by vessels in the country. The Committee indicates that it will consider the other comments made by the union under the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152).

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Bulgaria, Croatia, Lithuania.*

Information supplied by the *Netherlands* in answer to a direct request has been noted by the Committee.

Convention No. 29: Forced Labour, 1930

General observation

Further to paragraphs 70 to 72 of its General Report, the Committee wishes to draw the attention of all governments of States bound by the Convention to its provisions regarding hiring prison labour to private parties or placing it at their disposal. As it has often noted previously, the Convention's general prohibition of the use of forced or compulsory labour in all its forms — by which is meant all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily — does not apply to any work or service exacted as a consequence of a conviction in a court of law, provided that it is carried out under the supervision and control of a public authority and the person is not hired to or placed at the disposal of private individuals, companies or associations (see *Article 1(1) and Article 2(1) and (2)(c) of the Convention*). In this connection, the Committee would be grateful if all governments would include in their next reports information as to the present position in law and practice as regards:

(i) whether there are prisons administered by private concerns, profit-making or otherwise;

(ii) whether any private prison contractors deploy prisoners to work either inside or outside prison premises, either for the account of the contractor or for that of another enterprise;

(iii) whether private parties are admitted by the prison authorities into prison premises of any kind for the purpose of engaging prisoners in employment;

(iv) whether employment of prisoners outside prison premises, either for a public authority or for a private enterprise, is allowed;

(v) the conditions in which employment under any of the above conditions takes place, in respect of remuneration (indicating the level and comparing it with any minimum wage normally applicable to such work), benefits accruing (such as pension rights and workers' compensation), observance of occupational safety and health legislation and other conditions of employment (e.g. through labour inspection), and how those conditions are determined;

(vi) what the source of any remuneration is (whether from public or private funds) and for what purposes it must or may be applied (e.g. for the personal use of the prisoner or if it is subject to compulsory deductions);

(vii) for whose benefit is the product of prisoners' work and any surplus profit deriving from it, after deduction of overheads, and how it is disbursed;

(viii) how the consent of the prisoners concerned is guaranteed, so that it is free from the menace of any penalty, including any loss of privileges or other disadvantages following from a refusal to work.

Albania (ratification: 1957)

The Committee has noted with interest the information in the report supplied by the Government in 1996. It has noted in particular the prohibitions on forced labour contained in article 4 of the 1991 Constitution of the Republic of Albania and section 8 of the 1995 Labour Code, which have regard to the provisions of Convention No. 105, as well as to the present Convention. The Committee is addressing a direct request to the Government on certain matters.

Algeria (ratification: 1962)

The Committee notes that the Government's report received in 1997 does not contain any response to the observation made by the Committee in 1996 in respect of a number of questions to which the Committee has been drawing the Government's attention over a number of years, concerning in particular the following points:

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(b), of the Convention. Contrary to the Convention, Act No. 84-10 of 11 February 1984 respecting the civic service, as amended, imposes on persons who have completed a course of higher education or training judged to be a priority for economic and social development, civic service of between two and four years in order to obtain employment or exercise an occupation. The Committee has previously pointed out that compulsory service imposed upon persons who have received particular training under penalty of being unable to enter or obtain employment, is contrary to the Convention.

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(a). The National Service Code (Ordinance No. 74-103 of 15 November 1974, as amended) is incompatible with the Convention, in so far as it imposes obligatory service on conscripts which is not restricted to military service but includes alternative service in economic and administrative sectors for up to four years. Act No. 87-16 of 1 August 1987 with respect to the organization of the People's Defence envisages, under section 9, the adoption of regulations which would enable the People's Defence to participate in activities associated, in particular, with the protection of production units and strengthening the economic capacity of the country. The Committee notes the information from the Government that at the time of its report no regulations had been adopted, but the Committee again requests the Government to indicate the effect given in practice to section 9.

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c) and (d). Where a state of emergency has been declared, Executive Decree No. 91-201 of 25 June 1991 provides for the military authorities, which have police powers, to make detention orders against certain persons who refuse to comply with or who oppose the execution of a requisition order and to hold them in a security centre for 45 days with one right of renewal of the same period. The Committee again requests information as to the practical application of this Decree, to enable it to assess whether it Decree is compatible with the prohibition of forced labour under the provisions of the Convention.

The Committee would be grateful if the Government would provide additional information in its next report on the measures taken to ensure the application of the Convention in respect of the above-mentioned points, and if it would provide the information requested in its direct request. The Government might wish to seek the technical assistance of the ILO in this respect.

Australia (ratification: 1932)

The Committee has noted the information supplied by the Government in its reports received in October 1996 and September 1998. It has also noted a communication received on 21 August 1998 from the Australian Council of Trade Unions (ACTU), which contained statements concerning prison labour in private prisons in Victoria, in relation to the application of the Convention, as well as the Government's reply to these allegations, received on 6 November 1998.

Article 1(1) and Article 2(1) and (2)(c) of the Convention. 1. The ACTU indicates that there are three private prisons in the State of Victoria which accommodate 47 per cent of all prisoners in that State, and that there all prisoners under 65 have to work, under threat of penalty. According to the ACTU, at Deer Park Women's Prison those who refuse to work are moved to less desirable quarters; at Fulham Prison and Port Phillip Prison prisoners lose privileges if they refuse to work. The ACTU states that in all private prisons work is supervised by private operators (not a public authority) and prisoners are required to perform work for a private company (the company managing the prison). The rate of remuneration in private prisons is said to be A$6.50 or A$7.50 per day, compared with an award minimum daily rate of almost A$75 for freely employed workers.

2. The Government states in its reply that, in both public and private prisons, prison labour is carried out under the supervision and control of a public authority, and that prisoners remain in the custody of the State, which retains overall responsibility; the Office of the Correctional Services Commissioner (OCSC) retains direct responsibility for sentence calculation, prisoner assessment and classification and the allocation of security ratings. In respect of private prisons, the Minister, the Secretary of the Department and any person authorized by the Secretary has free access to the prison, all prisoners and persons employed at the prison, and all relevant documents in the possession of the prison operator, with a view to ensuring that the operator complies with all relevant laws and contractual obligations, and that the safe custody and welfare of the prisoners is maintained.

Prisoners detained in private prisons would be required to work in prison industries under the terms of the Victoria Corrections Act. Only ill or pregnant prisoners or those with a young child in their care would not be required to work. Rates of pay and hours of work would be established by the OCSC. The only prisoners not receiving some form of wages would be those who had directly refused to work, in contravention of the Corrections Act, "wages" for prisoners being better understood as "allowances" for cooperation with the prison regime. Limited prisoners' "wages" would be paid to those unable to work due to sickness, maternity, age or invalidity. Prisoners would not be covered by the State Workers Compensation Scheme or eligible for most social security payments.

The Government indicates that surplus income derived from prison industries is not retained by the private prison operator. The Prison Services Agreement between the Government of Victoria and each private prison operator requires the operator to ensure that all income from industries is kept separate from the income of the Contractor and that any profit from the industries is reinvested in the industry or expended in such other manner as is approved by the Secretary (of the Department of Justice).

In the Government's view, it is not appropriate to compare the rates of pay for prisoners with wages for the same type of work undertaken freely, without taking into account the context of prison labour. Prison industries are established to provide work skills and work experience as part of the rehabilitative process to develop skills necessary for prisoners' entry to the labour market upon release.

3. In its 1996 report, the Government referred in detail to prison labour in non-state prison facilities in South Australia, New South Wales, Queensland and Victoria, there being none such in the Northern Territory. In its report received in September 1998, the Government has also referred to legislation administered by the Queensland Correction Services Commission, and has stated that prison labour in Queensland falls within the Article 2(2)(c) exemption regardless of whether prisoners are housed in a state managed institution or a contract managed correctional centre. It also indicates that while there are no disincentives or penalties that would encourage prisoners to accept work, refusal to work would be regarded as not fully participating in the process of self-directed rehabilitation. The Government further states that Queensland Corrective Services (Administration) Act 1988, laying down conditions for the management of an operation of contract managed correctional centres by private organizations to conduct on behalf of the Queensland Corrective Services Commission any part of its operations, means that prisoners accommodated in contract managed prisons are "under the supervision and control of a public authority" as required by this Article.

4. The Committee recalls that work or service exacted from any person as a consequence of a conviction in a court of law is compatible with the Convention only if two conditions are met: namely that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations. Thus, the fact that the prisoner remains at all times under the supervision and control of a public authority does not in itself dispense from fulfilling the second condition, namely, that the person is not "hired to or placed at the disposal of private individuals, companies or associations". The Convention provides for no exception to this prohibition, which is absolute and should be complied with irrespective of the way by which the surplus income derived by the private prison operator can be distributed. The Committee noted in paragraph 98 of its 1979 General Survey on the Abolition of Forced Labour that this requirement is not limited to work outside penitentiary establishment but applies equally to workshops operated by private undertakings inside prisons; consequently, it applies to all work organized by privately run prisons.

The use of the labour of convicted persons in such workshops would be compatible with the Convention only if it were subject to the freely given consent of the prisoners concerned and guarantees as to the payment of normal wages, etc. The Committee notes that the rate of remuneration of prisoners is ten times lower than the minimum wage. Even taking into account that, according to the Government, the prisoners are acquiring work skills and experience, the rate would also be significantly lower than that applicable to workers undergoing training. The Committee also observes that prisoners would not be encouraged to be productive by such a low rate of remuneration. The practice of the supervision and control of public authority would also have to be examined carefully, as the Convention does not allow a full delegation of supervision or control to a private business.

5. With reference to paragraphs 97 and 98 of its 1979 General Survey and paragraphs 116 to 125 of its 1998 General Report concerning prison labour in privately run prisons, the Committee asks the Government to provide in its next report information on measures taken or envisaged to ensure, both in law and practice, that prisoners working for private employers offer themselves voluntarily without being subjected to pressure or the menace of any penalty and subject to the mentioned guarantees. It would be grateful if the Government would also, in the light of the Convention's requirements, continue to supply information about labour in non-state prison facilities in jurisdictions other than Victoria, in the light of the comments made above.

[The Government is asked to report in detail in 1999.]

Austria (ratification: 1960)

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c), of the Convention. Further to its previous comments on work done by prisoners and performed in workshops run by private enterprises inside the prisons, the Committee notes that the position of the Government remains unchanged and that the report repeats the statements by the Government already noted in its previous comments. The Committee notes that the envisaged inclusion of convicted prisoners in the statutory social insurance (sickness, accident and pension insurances) continues to be prevented by budgetary restrictions. It notes with interest that nevertheless remuneration for the work of convicted prisoners has been increased under the provisions of the Ordinance which came into effect on 1 January 1998.

The Committee noted in earlier comments made under the Convention, and in paragraph 98 of its 1979 General Survey on the abolition of forced labour, that the provisions of the Convention which prohibit convict labour from being hired to or placed at the disposal of private individuals, companies or associations are not limited to work outside the penitentiary establishments but apply equally to workshops which may be operated by private undertakings inside prisons (General Report, 1998, paragraph 117). Only when work is performed voluntarily by prisoners in conditions which guarantee payment of normal wages and social security, etc., can work by prisoners for private companies be held compatible with the explicit prohibition in *Article 2(2)(c)*; this requires the formal consent of the person concerned. The Committee pointed out that a necessary part of consent is that there must be further guarantees and safeguards covering the essential elements of a free labour relationship (ibid., paragraph 125). The Committee asks the Government to communicate information on any development in the matter, especially as regards the envisaged inclusion of convicted prisoners in the statutory social insurance schemes (sickness, accident and pension insurance), and to send the text of the above-mentioned Ordinance.

Bangladesh (ratification: 1972)

The Committee notes the Government's report and the discussions concerning this Convention in the Conference Committee in June 1998.

Article 1(1) and Article 2(1) of the Convention. I. *Freedom to resign from employment.* 1. The Committee referred in its previous observation to the Essential Services (Maintenance) Act, No. LIII of 1952 and the Essential Services (Second) Ordinance, No. XLI of 1958, under which termination of employment in the central Government without the consent of the employer is an offence punishable by imprisonment. The Committee notes that, in the Conference Committee as well as in its report, the Government again stated that there were measures in different laws to protect the workers in case of termination or dismissal. For present purposes, the Committee again asks the Government to indicate under what provisions and in what conditions the employees concerned, including employees of the central Government and in essential services, may resign from their employment on their own initiative, and what conditions are applicable to such resignation.

II. *Forced child labour*. 2. The Committee notes that the Conference Committee, having heard the information provided by the Government representative and the discussion which ensued, remained deeply concerned at the magnitude and seriousness of the child labour problem. The present Committee shares that concern.

3. As regards the garment industry, the Committee notes with interest that a Memorandum of Understanding was signed in 1995 between the Bangladesh Garment Manufacturers and Exporters Association, ILO and UNICEF, to remove all child workers below 14 years from over 2,000 garment factories and place them in school. This programme also includes continuous monitoring and verification of the garment factories to ensure compliance with the Memorandum. The Committee asks the Government to provide detailed information on the application of the Memorandum, as well as any report on the monitoring and verification of compliance in the factories.

4. As regards other sectors, the Committee would encourage the Government, in cooperation with the ILO, to envisage a similar approach to the above in other sectors where children are employed in violation of the Convention, and in particular in the less organized and more informal activities where the risks of such violation are greatest. The Committee asks the Government to send information on any measure taken to that effect.

5. In this connection, the Committee notes a statement by the Worker member of Bangladesh in the Conference Committee that the Government, employers and trade unions of the country were unanimous as to the need to eradicate child labour. The Committee has been informed that a National Plan of Action on Child Labour has been prepared and was due to be launched in 1998, with several priority areas of action. The Plan envisages the setting up of a Cell on Child Labour in the Labour Ministry and a National Council on Child Labour comprising representatives of the Government, Bangladesh employers' associations, trade unions and others. The Committee has also noted that 23 programmes on child labour have been funded by the ILO's International Programme for the Elimination of Child Labour (IPEC) since 1995, and 24 action programmes have taken place in 1996-97, some of them implemented by trade unions. It asks the Government to provide detailed information on the setting up and working of the Cell on Child Labour in the Labour Ministry, and information on the setting up of the National Council on Child Labour and its composition and functioning as well as any report which that Council may have issued on the efforts toward eliminating child labour, in particular compulsory child labour.

6. The Committee would encourage the Government to invite these bodies to pay particular attention to the situation of child domestic workers and to indicate any initiatives taken in the matter. The Committee is aware that the socio-economic conditions prevailing in the country make the situation particularly difficult. Therefore, it would encourage the Government to take measures in cooperation with the ILO in order to raise the level of awareness about child labour, and to provide information in its next report.

7. As regards *trafficking of children*, the Committee notes that the Worker member of Bangladesh in the Conference Committee stated that a special unit had been set up by the Government to take serious action against traffickers. It also notes that the above-mentioned Plan of Action covers child trafficking and child prostitution. The Committee has further been informed of a project with respect to child trafficking which would

envisage a programme to stop child trafficking. The Committee asks the Government to provide in its next report full information on the special unit referred to at the Conference Committee and detailed information on actions taken against traffickers in the light of the requirements of the Convention.

8. The Committee is aware that the situation is particularly complex and difficult. It would encourage the Government to take measures in order to raise the level of awareness about trafficking in all sectors of society, by resorting to every available means, including awareness campaigns. It asks the Government to provide detailed information on any practical measures taken in the matter.

9. The Committee notes that a draft Labour Code is currently under examination. It hopes that its comments have been fully taken into account and that the Government will communicate a copy of the Code as soon as it is adopted.

[The Government is asked to report in detail in 1999.]

Brazil (ratification: 1965)

1. The Committee notes the detailed information provided by the Government in its report, as well as the discussion which took place at the Conference Committee on the Application of Standards in 1997. The Committee is also concerned about the reports from the Inspection Secretariat which reveal the degrading circumstances in which forced labour is exacted in haciendas around the country, and particularly in rural areas. These circumstances include 18-hour working days, physical abuse, grossly inadequate nutrition and water supplies, lack of proper protective equipment, no toilet facilities, and supplying alcohol to workers to encourage them to work. The Committee also notes the comments on the application of Conventions Nos. 29 and 105 sent shortly before the Committee's meeting by the Latin American Central of Workers (CLAT), to the effect that the Government has not succeeded in eradicating forced labour and that serious problems persist in labour inspection, the imposition of adequate penalties and the protection of witnesses.

2. In its previous observation, the Committee requested the Government to supply information regarding the measures taken to follow up the recommendations approved in November 1995 by the Governing Body in its tripartite examination of the representation made by the CLAT under article 24 of the ILO Constitution, alleging non-observance by the Government of Brazil of Conventions Nos. 29 and 105 (document GB.264/16/7). The Committee notes that, in its conclusions, the Conference Committee endorsed the recommendations approved by the Governing Body. The Conference Committee observed that, despite the action that had been taken at federal level and in a number of States with a view to eradicating forced labour, there remained serious deficiencies in the practical application of these Conventions. It noted the establishment by the President of the Republic of the Executive Group for the Abolition of Forced Labour (GERTRAF), for the purpose, as the President said, of defining really severe sanctions for anyone who makes Brazilians into slaves.

3. Having regard to the serious nature of the allegations, the Committee hopes that the Government will provide a detailed reply to the comments made by the CLAT and information on the measures taken or contemplated to apply the Convention.

Article 25 of the Convention

4. In its conclusions on the aforementioned representation, the tripartite committee set up by the Governing Body observed that the allegations claiming that the proceedings initiated have been slow, were well-founded and that few penal sanctions had been

imposed on those responsible for the exaction of forced labour. The tripartite committee also observed that the few people who had been convicted of exacting forced labour had been intermediaries or small owners and leaseholders, while the owners of large haciendas or enterprises using the "services" of "third party" enterprises or individual intermediaries for production activities conducted under conditions of forced labour went unpunished. In this regard, the Government reiterates in its report that, because legislation contains no definition of the concept of slave labour referred to in section 149 of the Penal Code, there are major practical difficulties in imposing more severe penalties on persons guilty of exacting forced or compulsory labour. The Government has provided copies of a number of court judgements but there was only one decision by which an employer was sentenced to two years' imprisonment for contravening section 149 of the Penal Code.

5. However, the Committee notes with interest the copies forwarded by the Government of various Presidential Decrees declaring the haciendas of some owners, who have been guilty of degrading labour practices, to be of public interest for the purpose of agrarian reform. Such declarations have resulted in the haciendas being confiscated from the owners to be transferred to the agrarian reform system for later possible distribution to other farmers.

6. The Committee trusts that the Government will take the necessary measures to ensure, in accordance with the Convention, that the relevant provisions of national legislation are amended so that the definition of slave labour covers forced labour and effective penalties can be imposed on persons found guilty of exacting forced labour, particularly in rural areas. The Committee requests the Government to provide detailed information on this matter, particularly as to the practical aspect of the presidential Decrees.

7. The Committee previously noted that a number of trials initiated in 1994, 1993 and some in 1991, involving allegations of relevance to the Convention, were still in progress. The Government's information confirms that the judicial authorities are acting towards punishing cases of the use of forced labour but must follow existing procedures. In this regard, the Committee notes the extreme slowness of the judicial process which, in many legislative systems, would amount to a denial of justice and in addition the Committee notes that this slowness could in practice result in the deterrent effects hoped for being negated. The Committee requests the Government to inform it of any measures taken to expedite the trials that are still in progress and the outcome of such trials.

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2

8. The Committee recalls the information provided previously on the possibility of drawing up a consolidated Bill which would allow more adequate treatment of the various aspects of "degrading labour", which includes forced labour. While expressing its concern at the absence of effective legislation for combating forced labour, the Committee again expresses the hope that the Bills currently under consideration will result very soon in the adoption of a text and requests the Government to provide a copy of the Bills as soon as they have been adopted.

9. The Committee notes that the Inspection Secretariat is reinforcing its role to combat forced labour by expanding the rural inspection teams and is directing inspection activities to areas where rural workers are recruited in order to inform and educate employers about the rights of workers who are to be recruited. The Committee also notes the publication of Regulation No. 101 of 12 January 1996 which allows mobile inspection teams to apply to the National Institute of Settlements and Agrarian Reform (INCRA) to expropriate rural land for the purpose of agrarian reform in cases of repeat offences of

"degrading labour" practices. An additional 1,000 agents have been recruited, there is currently a total of 3,192 agents at national level and more inspectors are to be recruited this year. The Committee also notes that the activities of the Mobile Inspection Service covered 112,551 workers in 370 undertakings between 1996 and 1998, and that the number of inspections carried out at rural workplaces increased from 1,628 in 1995 to 5,858 in 1996 and 9,737 in 1997. The Government points out that the civil institutions (including trade unions) have joined forces in the fight against forced and "degrading labour" and reports such practices to the Ministry of Labour which immediately notifies teams of the Special Mobile Inspection Service. The Committee requests the Government to provide detailed information on the activities of the labour inspectorate in the fight against forced labour, in particular in rural areas. It also requests the Government to keep it informed of any measures to protect the work of inspectors in areas with a high incidence of forced labour practices.

[The Government is asked to report in detail in 1999.]

Burundi (ratification: 1963)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In its previous comments, the Committee noted the information provided by the Government in June 1993 to the effect that the process of adapting and harmonizing legislation with the Convention was continuing; a technical file on this subject, of which the Government supplied a copy, was submitted in March 1993 by the Minister of Labour to the Minister of the Interior. The Committee noted that according to this file the draft texts for repealing the provisions concerned had already been prepared.
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> The Committee noted that in its report received in 1994 the Government appealed for comprehension by the ILO supervisory bodies of the fact that the approaches to the competent services of the Ministries of Justice and of the Interior are not yet complete as political events have not allowed the consultations initiated by the Ministry of Labour to continue normally. Nevertheless, the Government promised to make every effort to ensure speedy completion as soon as the political and administrative situation in the country has returned to normal.
>
> The Committee has taken due note of this commitment. It hopes that the Government will soon be in a position to supply information on the specific measures it has adopted on the following points, raised in previous comments:
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> 1. In its previous comments concerning Ordinances Nos. 710/275 and 710/276, establishing obligations respecting the conservation and utilization of the land and the obligation to create and maintain minimum areas of food crops, the Committee emphasized the need to set out in the law the voluntary nature of agricultural work.
>
> The Committee notes the Government's statement in the above note that measures to repeal these Ordinances should be envisaged in the very short term. The Committee requests the Government to supply the texts to repeal the above Ordinances, once they have been adopted.
>
> 2. The Committee referred to certain texts relating to compulsory cultivation, porterage and public works (Decree of 14 July 1952, Ordinance No. 1286 of 10 July 1953, Decree of 10 May 1957) and recommended that they be formally repealed.
>
> The Committee noted the Government's statement that explicit measures to repeal the above texts are justified, principally due to their colonial nature and the fact that they have fallen into abeyance, and that measures have been undertaken with a view to repealing them.
>
> The Committee notes that the file supplied by the Government confirms this intention. The Committee requests the Government to supply a copy of the texts which are adopted for this purpose.

3. The Committee noted that Legislative Decree No. 1/16 of 29 May 1979 establishes the obligation, under penalty of sanctions, to perform community development work.

The Committee notes that the above file recommends that the text in question be repealed and be replaced by the relevant provisions of Legislative Decree No. 1/11 of 8 April 1989 to reorganize communal administration. The Committee requests the Government to supply information on the provisions adopted in this respect.

4. With reference to sections 340 and 341 of the Penal Code, which establish sanctions for vagrancy and begging, and to its previous comments, the Committee notes that an opinion has been requested from the Ministry of the Interior on this subject. The Committee requests the Government to supply information concerning this opinion and on the programme of vocational rehabilitation which the Government considers should serve to avoid vagrancy and begging by assisting persons without employment. The Committee notes Ordinances Nos. 660/161 of 1991, 660/351/91 and 660/086/92, the texts of which were supplied by the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Cambodia (ratification: 1969)

The Committee notes the Government's report, which refers to articles 15 and 16 of the new Labour Law, Chapter 1, section V, which were adopted by the National Assembly on 10 January 1997. Article 15 prohibits forced or compulsory labour. Article 16 prevents hiring of people for work to pay off debts.

Article 1(1) and Article 2(1) and (2)(d) and (e) of the Convention. 1. In its earlier comments, the Committee referred to Sub-Decree No. 10 SDEC of 28 February 1994 establishing a Workday for Irrigation and Agriculture which provides that all people, armed forces, officials and public servants have an obligation to perform irrigation work for 15 days a year, and students for seven days a year (section 3). In its earlier comments, the Committee noted the Government's statement that this Sub-Decree established a civic service for the purpose of restoring infrastructures in rural regions after annual disasters — floods and drought; participation in this work was voluntary. The Government stated that, in practice, a single day's work was done in 1996, the persons carrying out this work receiving payment in kind and benefiting from an irrigation system for their paddy fields. In its latest report received in June 1998 the Government repeats its statement that the manual work for irrigation and agriculture provided for by the Sub-Decree does not mean forced or compulsory labour, and that it has never observed any kind of forced or compulsory labour in Cambodia.

2. The Committee recalls that the work under the Sub-Decree is compulsory for the whole population. Whilst noting the Government's statement that under section 15 of the new Labour Code of 1997 forced labour is prohibited absolutely in conformity with the provisions of Convention No. 29, the Committee again points out that the Sub-Decree, if implemented in accordance with its specific provisions, would enable labour which did not meet the exemptions of "minor communal services" or "emergency" to be exacted from persons against their will. It is therefore the specific provisions of the Sub-Decree which are not in conformity with the Convention. The Committee hopes that the Government will revise the Sub-Decree, as well as all the decisions taken under it so as to remove any ambiguity, and that it will be able to report, in the near future, on the measures taken or contemplated to ensure observance of the Convention in this respect.

Article 25. 3. In its earlier comments the Committee noted that, under section 369 of the new Labour Code of 1997, persons violating the provisions of section 15 on the prohibition of forced labour are liable to a fine of from 61 to 90 days' reference wages or imprisonment ranging from six days to one month. The Committee hopes that the Government will indicate what penalties are imposed under section 369 and describe any legal proceedings which have taken place.

Cameroon (ratification: 1960)

1. For more than 20 years, the Committee has been drawing the Government's attention to the provisions of Act No. 73-4 of 9 July 1973 instituting the National Civic Service for Participation in Development which allows the imposition of work in the general interest on citizens aged between 16 and 55 years for a period of 24 months on pain of imprisonment for two to three years in the event of refusal. In the light of the explanations given in paragraph 52 of the General Survey of 1979 on the abolition of forced labour, the Committee requested the Government to take the necessary legislative or regulatory measures to enforce the principle that only volunteers should perform civic service.

2. The Committee has noted with interest the dissolution of the National Office of Participation in Development by Decree No. 90/843 of 4 May 1990, and the statements made by a Government representative to the 1990 Conference according to which Act No. 73-4 was being amended. In its reports of 1994 and 1996, the Government stated that the legislation in question had not yet been repealed.

3. The Committee draws the Government's attention to the fact that, while the dissolution of the ONPD was an important step towards implementation of the Convention, repeal or amendment of the 1973 Act is still necessary to bring legislation into line with practice and to give full effect to the Convention. It therefore expresses the strong hope that the Government will take the necessary measures in the very near future to bring its legislation into conformity with the provisions of the Convention and that it will provide information on any progress made in this regard.

Article 2, paragraph 2(e), of the Convention. 4. In its previous comment, the Committee noted that, under the terms of section 2, paragraph 5(b), of Act No. 92/007 of 14 August 1992 promulgating the new Labour Code, the term "forced or compulsory labour" does not cover any work or service of general interest which forms part of the civic obligations of the citizens as defined in laws and regulations, and requested the Government to provide a copy of the provisions which defined citizens' civic obligations.

5. The Committee notes that the Government's report contains no reply on this point. It again expresses the hope that the Government will provide the information requested, in particular with regard to the regulations or legal provisions which define or relate to citizens' civic obligations, so that it may be assured that work or service done in the general interest as part of these normal civic obligations conforms to the terms of the Convention (*force majeure*, compulsory military service) or the terms indicated by the Committee in paragraph 34 of its 1979 General Survey (jury service, assistance to persons in danger, etc.).

Article 2, paragraph 2(c). 6. The Committee has for many years referred to the provisions of Decree No. 73-774 of 11 December 1973, concerning the prison regime which permits the transfer of prison labour to private enterprises and individuals, and has requested the Government to take steps to prohibit this practice. In its previous reports, the Government indicated that, in practice, no such hiring of prison labour to individuals or private companies was possible without the prior consent of the prisoners themselves. The Committee also noted the statement by the Government representative to the 1990 Conference, which drew attention to measures adopted by the Ministry of Territorial

Administration to prevent prison labour from being hired to or placed at the disposal of private individuals or companies. It expressed the hope that the Government would provide information on the measures that had been adopted in this regard. In its last report received in 1996, the Government states that no new provisions have been adopted and that it would not fail to provide information on any action taken along the lines hoped for by the Committee.

7. On the basis of the explanations given in paragraphs 97 to 101 of the 1979 General Survey, which specify the conditions under which private companies may use prison labour (prisoners' consent and guarantee of salary and social security), the Committee again requests the Government to provide information on any measures that have been taken, in particular those adopted by the Ministry of Territorial Administration, or to take the necessary legislative or regulatory measures in the very near future to ensure that prisoners will not be placed at the disposal of private individuals or companies except under conditions of a free employment relationship.

8. In addressing the above matters, the Government might wish to have recourse to the Office's technical advice.

Central African Republic (ratification: 1960)

Article 1, paragraph 1, and Article 2, paragraph 1, of the Convention. 1. Since 1966, the Committee has been pointing out to the Government that Ordinance No. 66/004 of 8 January 1966, respecting the suppression of idleness (as amended by Ordinance No. 72/083 of 18 October 1972) is contrary to the provisions of the Convention. The Committee also drew the Government's attention to the non-conformity with the Convention of section 11 of Ordinance No. 66/038 of June 1996 respecting the supervision of the active population, and sections 2 and 6 of Ordinance No. 75/005 of 5 January 1975, making the performance of commercial, agricultural and pastoral activities compulsory.

2. The Committee noted the Government's indications that the above-mentioned texts have fallen into abeyance and that measures were to be taken to bring the law and practice into conformity with international labour Conventions. With particular reference to Ordinance No. 66/004 of 8 January 1966, the Government has been stating for 30 years that repealing legislation has been drafted.

3. The Committee notes that the Government's report, while indicating that article 8 of the new Constitution of 14 January 1995 abolished forced labour in all its forms, does not contain any other information on the measures adopted to bring the above-mentioned texts into conformity with the Convention. The Committee expresses firmly the hope that in the light of the new Constitution, the Government will take the necessary measures in the very near future to give effect to the Convention.

Article 2, paragraph 2(a), of the Convention. 4. In its previous observations, the Committee noted that section 28 of Act No. 60/109 of 27 June 1960 respecting the development of the rural economy, which provides for minimum surfaces for cultivation to be established for each rural community, is contrary to the requirements of the Convention. The Committee has also noted the Government's previous indication that the practice of compulsory cultivation no longer existed and that vigorous efforts were being made instead to provide guidance to encourage cultivation. In this light, and in view of the new Constitution, the Committee hopes there will be repeal or amendment of the legislation to bring it into conformity with the Convention.

5. The Committee also notes the Government's statement that new draft texts will be introduced to reinforce the national legislation on forced labour. It hopes that the new

legislation will take into consideration the comments that it has been making on this subject for many years and that it will transmit copies of the texts which are adopted.

6. The Committee reminds the Government that it may call upon the technical assistance of the International Labour Office to help it resolve difficulties encountered in bringing its legislation into conformity with the ILO's Conventions on forced labour.

Chad (ratification: 1960)

The Committee notes the Government's statement in its report, that the Government will act on the comments of the Committee on this Convention and others, and measures will be adopted to bring legislation into conformity with the Convention.

In previous comments, the Committee asked the Government to communicate copies of legislation governing military service. It noted the Government's intention to amend or repeal section 2 of Act No. 14 of 13 November 1959 allowing the use of persons sentenced by administrative decision to work in the public interest, contrary to *Article 2(2)(c) of the Convention*. The Committee also noted the Government's intention to repeal section 982 of the General Code of Direct Taxes, which empowers the authorities to exact labour for the recovery of taxes, also contrary to the Convention *(Article 2(1))*. In a direct request, the Committee sought information on the freedom of persons in state service to leave their employment, particularly career military personnel.

The Committee hopes the Government will be able to send the information asked for with its next report indicating progress made in relation to legislation and to supply copies of the texts governing military service, as requested before.

Chile (ratification: 1933)

Article 1, paragraph 1, and Article 2, paragraph 1, of the Convention. The Committee previously commented on certain provisions of the Penal Code relating to forced or compulsory labour in the event of vagrancy (sections 305 and 306). It notes with satisfaction that Act No. 19.567 of 22 June 1998 repeals paragraph 13 on vagrancy and mendacity, of Title VI, Book II, of the Penal Code, as well as sections 305 to 312 of the same Title.

Colombia (ratification: 1969)

1. The Committee takes note of the reports sent by the Government and of the promulgation in 1993 of a new Prison and Penitentiary Code (Act No. 65).

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c), of the Convention. 2. In its comments over a number of years, the Committee has referred to sections 269 and 233 of Decree No. 1817 of 1964 (the Prison Code), which imposes compulsory labour not only on persons who have been convicted but on all detainees except those declared medically unfit. The Government had indicated that the obligation to work imposed on detainees is merely a written legal form which has no practical application, since despite inmates' requests, the Ministry of Justice and the Directorate of Prisons cannot respond satisfactorily due to lack of means and human resources. The Committee notes, however, that section 86 of the new Prison and Penitentiary Code provides that detainees may be allowed to work individually or in groups for performing public, agricultural or industrial work under the same conditions as convicts, with the permission of the director of the penal establishment in question.

3. The Committee recalls once again that an obligation to work may only be imposed on persons convicted in a court of law. Imposition of an obligation to work by

the administrative authorities or other non-judicial bodies is therefore not compatible with the Convention; prisoners awaiting trial or detained without trial may work on a purely voluntary basis, if they wish to do so (see paragraphs 90 and 94 of the 1979 General Survey on the abolition of forced labour). As section 86 of the new Code in its current form leaves open the possibility of imposing compulsory labour on detainees, in contravention of the Convention, the Committee requests the Government to ensure that the necessary measures are taken to amend this section so as to bring it into line with the Convention by expressly establishing the purely voluntary basis of prison work done by detainees.

4. In other comments that it has been making for some years, the Committee has referred to section 182 of Decree No. 1817 of 1964, under which work in prison establishments may be arranged directly through the administration or through contractors who are provided with premises and the labour of detainees and convicted persons, and who in exchange supply the necessary equipment and materials for the work and pay wages in accordance with the terms and conditions laid down by the prison administration. The Committee notes that, under section 84 of the new Prison and Penitentiary Code, prisoners can work for private individuals and the conditions of employment, relating to the type of work, working time and remuneration, must be laid down in an employment contract. It also stipulates that compulsory work may be imposed on prisoners by order of the prison director, in accordance with the rules established by the National Penitentiary and Prison Institute (INPEC). The Committee also notes that section 87 empowers the director of any prison establishment to enter into agreements or contracts with private individuals or companies with the sole aim of providing work, education and recreation, and of maintaining the effective working of the establishment.

5. The Committee wishes to point out that work done by prisoners for the benefit of companies or private individuals cannot be compatible with the Convention unless the prisoners concerned have given their voluntary consent and provided that there are guarantees, such as normal wages, social security provision, etc. However, the Committee observes that there are currently no provisions in national legislation relating to the voluntary consent to work for private companies. Moreover, according to section 84 of the Code, work can be imposed on prisoners by order of the prison director, which is not compatible with voluntariness. The Committee therefore requests the Government to take the necessary measures to enshrine the principle that prisoners must give their voluntary consent to work for private individuals, and to inform it in its next report of any progress made in this regard.

6. The Committee also notes that section 86 provides that work done by prisoners shall be fairly remunerated. In order to allow it to assess the application of the Convention, the Committee requests the Government to indicate the type of remuneration paid to prisoners working for private companies and to provide copies of agreements that have been concluded between the private companies and prison establishments.

Comoros (ratification: 1978)

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c), of the Convention. 1. In its comments over a number of years, the Committee has drawn the Government's attention to section 1 of Order No. 68-353 of 6 April 1968, under which labour is compulsory for all persons in detention. It noted the Government's statements according to which, in practice, persons in detention are not compelled to work and requested the Government to amend the provision in question to ensure that legislation reflects actual practice. In its last report received in 1997, the Government indicated that during recent years, the prison administration had been adversely affected by frequent changes at ministerial level, but that the management of detention centres was being transferred back to the Ministry of Justice, which would facilitate the implementation of an improved prison policy. The Committee therefore trusts that the Government will do everything possible in the near future to ensure through legislation that prisoners are not compelled to work except as a consequence of a conviction in a court and only under conditions stipulated by the Convention; and that prisoners and persons held in detention who have not been tried are not compelled to work and may work only on a purely voluntary basis and at their request.

2. In its earlier comments, the Committee also referred to section 7, paragraph 2 of the Order in question, according to which prisoners whose conduct is considered satisfactory can work for a private employer with a view to their moral rehabilitation and readaptation to normal working life. It requested the Government to provide information on the practice of private individuals or companies using prison labour. The Government states that punishment involving the deprivation of liberty of prisoners in agricultural institutions could help to eliminate idleness, reduce the temptation to escape, and provide a regular diet and income, part of which would be used to pay compensation. The Committee requests further information about the arrangements for prisoners working in agricultural institutions including their supervision, income and payment of compensation.

The Committee notes that a survey is under way on the role of the prison in the country's penal system and that alternative punishments such as community service are to be incorporated in the Penal Code. The Committee hopes that the revision of prison legislation that is currently under way will be completed in the near future, that it will take account of the provisions of the Convention concerning in particular the conditions for the use of prison labour, as explained in paragraphs 97-101 of the General Survey of 1979 on the abolition of forced labour and also explained in paragraphs 116-125 of the 1998 General Report, and that copies of any new texts will be provided.

Congo (ratification: 1960)

The Committee notes with regret that the Government's report has not been received. It refers to its previous comments concerning in particular the application of *Article 2(1) and (2)(a) and (d) of the Convention*. The Committee notes the political and economic difficulties in the country. It wishes to return to its examination of the application of the Convention at its next session and hopes the Government will supply a detailed report for that purpose.

[The Government is asked to report in detail in 1999.]

Côte d'Ivoire (ratification: 1960)

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c), of the Convention. The Committee has since 1962 drawn the Government's attention to sections 24, 77 and 82 of Decree No. 69-189 of 14 May 1969 (issued under sections 680 and 683 of the Criminal Procedure Code) which provides that prison labour may be hired to private individuals. The Committee has already recalled in numerous comments on this legislation that it is only when work is voluntarily accepted by prisoners and carried out in conditions similar to those of free employment relations (e.g. as to wages) that prison work for a private enterprise or person may be regarded as compatible with the Convention. The Committee refers to paragraphs 97 to 101 of the General Survey of 1979 on the abolition of forced labour and the more recent comments in its General Report of 1998, paragraph 125.

The Committee notes the Government's statement that the draft amendments to bring the above-mentioned Decree into conformity with the provisions of the Convention have not been completed. The Committee requests the Government to provide information on any developments and any progress achieved in this regard. The Committee also reminds the Government that it may call upon the technical assistance of the International Labour Office to help with any difficulties encountered in bringing its legislation and practice into conformity with the Convention.

In addition, the Committee has become aware of information according to which there is a widespread practice of migrant labourers, including children particularly from Mali and Burkina Faso, being forced to work on plantations against their will. The Committee would be grateful if the Government would include information on this point in its next report.

Democratic Republic of the Congo (ratification: 1960)

The Committee notes with regret that the Government's report has not been received. It refers to its previous comments concerning in particular the application of *Article 2(2)(b)* and *(c)* and *Article 25 of the Convention*. The Committee again notes the political and economic difficulties in the country. It wishes to return to its examination of the application of the Convention at its next session and hopes the Government will supply a detailed report for that purpose.

[The Government is asked to report in detail in 1999.]

France (ratification: 1937)

The Committee notes the detailed information contained in the Government's last reports in response to the Committee's previous comments as well as the new observations submitted by the French Democratic Confederation of Labour (CFDT) in October 1996 and September 1998.

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c), of the Convention. 1. In its previous comments, the Committee raised a certain number of points relative to prison labour and, in particular, the question of consent freely given by the prisoner, the employment contract, and the wages and conditions of work of prisoners in the event that they are made available to private enterprises. The Committee requested the Government to adopt the necessary measures both in law and in practice to ensure that the employment conditions of these prisoners allow their situation to be assimilated to that of free workers.

2. The CFDT in its recent communication reiterates its request for a contract to be concluded between the prison administration and prisoners, defining the obligations of the parties. The CFDT also considers that the supervision of prison labour should be entrusted to a labour inspection service, since legislation relating to health and safety at work should be applied in prisons under the same conditions as elsewhere.

3. The Committee takes due note of the Government's statement that a Bill establishing a labour inspection service has been drawn up, and a circular defining the methods of work of the prison labour inspection services with regard to health and safety at work and vocational training has also been drafted. The Committee hopes that the Government will provide copies of the final texts as soon as they have been adopted.

4. The Committee also notes that, following an agreement concluded between the prison authorities and the local medical service, medical examinations will shortly be introduced, during a trial period, for prisoners who are working. The Government

indicates that a legal and social text with respect to prison labour is being drawn up and that the themes covered (remuneration, social protection, health and safety at work) will provide responses to the questions that are being raised in this regard. The Committee trusts that the Government will provide full information in its next report.

5. Finally, the Committee notes with interest the Government's statement that the average daily wage paid to prisoners has been increased although disparities remain among different types of prison labour. The Committee requests the Government to continue to take measures to ensure that wages and employment conditions of prisoners who are made available to private enterprises conform to relevant standards and to provide information in respect of the measures adopted or envisaged in this regard.

6. The Committee recalls that the Convention clearly excludes the use of prison labour for the benefit of private enterprises; however, where the necessary safeguards exist to ensure that prisoners accept work voluntarily and prison labour is carried out under the supervision and control of the public authorities, the Committee refers to paragraph 97 of the General Survey of 1979 on the abolition of forced labour and paragraphs 116 to 125 of the General Report of 1998: the Committee considers that an employment contract could, particularly in prisons, resolve this problem by ensuring that the necessary safeguards are provided. However, the Committee hopes that the Government will provide in its next report all the necessary information to enable a general assessment of the situation in respect of these provisions of the Convention.

Germany (ratification: 1956)

The Committee notes the Government's report and the decision of the Federal Constitutional Court of 1 July 1998.

In its last observation, the Committee observed that section 41(3) of the 1976 Act on the execution of sentences, which requires the formal consent of the person concerned to working in privately-run workshops, had not been brought into force; that no measures had been taken to implement the provision in section 198(3) of the 1976 Act for the inclusion of prisoners in the health and pension insurance schemes; and that their wages had remained fixed for the last 20 years at 5 per cent of the national average.

The Committee notes that the Government's report refers to a decision of the Federal Constitutional Court of 1 July 1998. According to the Government, this decision considered section 41 of the above-mentioned Act and said that it only applied in so far as the performance of the work comes under the public responsibility of the prison officers. The Government also said the decision confirmed its own view that the employment of prisoners in private enterprises managed by penal institutions does not constitute forced labour. The Government states that the legislator supported its view and expressly declined to bring section 41(3) into force; and that the court's decision declared that, although section 200(1) of the Act, which fixed the level of remuneration of prisoners under section 43, was incompatible with certain principles of rehabilitation, it would nevertheless continue to be applied. The court instructed the legislature to draft a new regulation. The Federal Government indicates its intention of considering together with Länder governments the conclusions to be drawn from the court's decision and says it will report accordingly to the ILO.

While noting this information, the Committee draws the attention of the Government to paragraph 118 of its General Report in 1998 in which it stressed that the provisions of *Article 2(2)(c) of the Convention* are not conditional on any particular kind of legal relationship. Thus, they are not limited to cases where a legal relationship would come into existence between the prisoner and the private undertaking, but equally covers situations where no such legal relationship exists and the prisoner has a direct relationship only with the prison. The Committee considers that voluntary consent by the prisoner to working for a private employer is one of the two necessary conditions for compliance with the Convention's prohibition on hiring prisoners to, or placing them at the disposal of, the employers. As the Committee has pointed out previously, only when work is performed voluntarily in conditions which guarantee normal wages, social security, etc., can work by prisoners for private companies be held compatible with the explicit provisions of *Article 1(1) and Article 2(1) and (2)(c)*.

The Committee takes due note of the Government's statement and hopes that the Government in its consideration of the effect of the Court decision will take into account the requirements of the Convention and the Committee's observations as well as comments in paragraphs 97 to 101 of its General Survey of 1979, and that it will set out its reflections in its next report.

Greece (ratification: 1952)

The Committee notes the Government's reports.

Further to its previous comments, the Committee notes with interest the adoption in October 1995 of Act No. 2344/95 respecting the organization of civil defence, dealing with questions of emergency arising from physical or technological causes. The Act provides for the mobilization of groups of volunteers in emergency situations. The Committee notes that the Act replaces Legislative Decree No. 17 of 1974, on which it had been commenting for several years. It considers that the Act does not call for comments under the Convention.

Guatemala (ratification: 1989)

The Committee recalls the conclusions reached by the Governing Body at its 267th Session (November 1996) following the recommendations of the committee set up to consider the representation made by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and Public Services International (PSI) under article 24 of the Constitution concerning the application of the present Convention and Convention No. 105. It notes that the Government's report does not contain the information requested by the Governing Body on the action taken in relation to its conclusions.

The Committee hopes the Government will deal in full in its next report with the application of *Article 1(1), Article 2(1) and (2) and Article 25 of the Convention* in this connection. The Committee recalls in particular the conclusion of the Governing Body as to compulsory labour exacted from hundreds of thousands of people under the guise of service in the so-called Civil Self-Defence Patrols (PACs) and Voluntary Civil Defence Committees (CVDCs), and the failure to impose penalties for the illegal exaction of such labour. It requests the Government to provide information on steps taken to make effective the prohibition of compulsory association with such bodies which is contained in article 34 of the Constitution, including the repeal of legislation such as Legislative Decree No. 19-86 and the results of judicial proceedings in these matters.

The Committee is addressing a request directly to the Government on other points.

[The Government is asked to report in detail in 1999.]

Haiti (ratification: 1958)

Article 1, paragraph 1, and Article 2, paragraph 1, of the Convention. The Committee refers to its previous observation and notes the indications given by the Government to the effect that it has drawn the attention of the Social Welfare and Research Institute (IBESR) to the need to work towards the suppression in practice of domestic and forced or compulsory labour imposed on children below the statutory employment age (known as "*restavek*"). The Committee notes the Government's renewed commitment to communicate statistics in respect of the activities of the IBESR, the municipal authorities and the labour courts, and to conduct an exhaustive study into general working conditions. The Committee trusts that the Government will make every effort to provide this information in its next report. The Committee reminds the Government that it may request the technical assistance of the ILO to overcome any difficulties it may experience in the application of the Convention in this respect.

Article 25. The Committee would be grateful if the Government would provide information on any court proceedings instituted or sentences enforced in respect of the illegal exaction of forced or compulsory labour.

India (ratification: 1954)

1. In its previous observations, the Committee has examined several aspects of the application of *Articles 1(1) and 2(1) of the Convention*, relating in particular to the issue of bonded labour, especially of children; and including the question of penal sanctions for the illegal exaction of forced or compulsory labour, as required by *Article 25* of the Convention. The Committee has noted the detailed discussion of this issue in the Conference Committee in 1998, in which the importance of obtaining better information as to the extent of the illegal bonded labour was underlined, as was the need for more effective enforcement measures. Special concern was again expressed as to the bonded labour and sexual exploitation of children.

2. The Government's report was received by the Office shortly before the Committee's session in November 1998. The report acknowledges the seriousness of the problem, but places it in the context of India's developing economy, with widespread unemployment, poverty and illiteracy. It provides copies of judgements of the Supreme Court relating to bonded labour, particularly as concerns the continuing problem of the lack of reliable information from the central and state Governments, and certain statistics of inspections carried out and bonded labourers rehabilitated. It refers to the role of the National Human Rights Commission and district-level vigilance committees. The Government says that trade unions have not played a leading role in respect of this problem so far, although it would welcome their involvement — as it does that of voluntary agencies. The Government also replies to the Committee's previous direct request.

3. The Committee has noted further the comments of the National Front of Indian Trade Unions (NFITU), which stresses the adverse effects of economic liberalization and globalization in terms of shortage of work and the willingness of the poorest to submit to any kind of pressure to secure some employment. It calls for a huge effort to combat the causes of forced or compulsory labour, which lie in socio-economic injustices exacerbated by unrestricted population growth, and also for heavy punitive measures to enforce the laws.

4. The Committee recalls the longstanding dialogue on this Convention both through its own comments and in the Conference Committee. It welcomes the more detailed information provided by the Government, although because of the report's late

arrival the Committee has not had the opportunity to examine the details as it would wish. The Committee also notes with interest, with regard to the Government's and the NFITU's reference to the more general unemployment problem, that India has ratified the Employment Policy Convention, 1964 (No. 122), thereby committing itself to the declaration and pursuit of a policy of full, productive and freely-chosen employment.

5. The Committee intends to return in particular to a consideration of the judgements referred to at its next session. In the meantime, it reiterates its view, echoed by the Conference and the Government, that cooperation with the ILO's International Programme for the Elimination of Child Labour (IPEC) offers a real opportunity to address the problems of application of the Convention as regards children. It hopes the Government will send further statistical information as it becomes available concerning bonded labour, as well as details of measures and programmes pursued in cooperation with workers' and employers' and other organizations at the national and local levels. It looks forward also in due course to information as to the development, perhaps in cooperation with the responsible advisory services of the ILO, of a national policy in terms of Convention No. 122 which includes the goal of free choice of employment as well as the abolition of forced or compulsory labour. It requests the Government to provide any available new information in time for its next session.

[The Government is asked to report in detail in 1999.]

Indonesia (ratification: 1950)

The Committee notes the Government's report.

Article 1(1) and Article 2, of the Convention. 1. In its previous observation, the Committee asked the Government to provide information on the situation in East Kalimantan on the Island of Borneo. The Committee referred in considerable detail to information from the World Confederation of Labour (WCL) that the Dayak people were submitted to conditions of debt bondage. This resulted from practices in commercial logging concessions, in related company-designed community development projects, and in industrial forest plantations. Also, as a result of the negative impact of logging concessions on local communities, the Government was said to have required all concessions to undertake the development of a nearby community under a development programme (HPH *Bina Desa* Programme); but these programmes were commonly misused by companies which coerced and threatened villagers into forming work groups and farmers' groups. The groups were then, it was said, ordered to carry out uncompensated labour on so-called "participatory" development projects designed by the company without regard for the needs or wishes of the community being "developed".

2. The Government states in its report that the objective of the community development programme is to assist the village community in acquiring economic and social facilities such as road construction and village meeting halls, developing various local businesses, and improving awareness of forest conservation and security. Planning and implementation by the logging concessions is always based on a diagnostic study, which is to identify the economic condition and potential of the respective village as well as social conditions, aspirations and expectations of the community. To build the economic and social facilities, the Dayak people are usually only asking for support from the programme to provide the material needed. They work together voluntarily without expecting wages.

3. The Committee requests the Government to provide information on the practical application of the programmes, and particularly on any measures aiming, for example, at

guaranteeing that the programmes are entered into voluntarily by the villagers concerned and that there is no form of compulsory work or any constraint in the application of the programmes by the companies, whose interest it is to show that the programmes have been completed to secure the renewal of their timber licenses. It remains concerned at allegations of forced labour in these circumstances.

4. The Committee in its previous observations also mentioned a joint decree by the Ministries of Forestry and Transmigration, requiring the logging concessions to develop industrial forest plantations (*Hutaman Tanaman Industri*, HTI). The Committee indicated that it had been informed that wages paid on the plantation were usually significantly lower than the cost of living. Company stores had been established near plantation or logging work sites. Purchases at these company stores were made under a voucher system run by company management and the vouchers were based upon future wages, thus creating a risk of debt-incurred labour. The Committee notes that there are no comments on that aspect in the report with regard to debt bondage and asks the Government to provide information on this matter in its next report.

5. The Committee previously noted that, according to the WCL, under the industrial forest plantation transmigration programme, impoverished farmers from Java are provided with a boat ticket to a Kalimantan port. They are then placed in far-off locations, and there is no choice for some of them but to engage in plantation labour or logging work gangs at wages lower than the cost of living, forcing them into debt. Indigenous people, as well as transmigrant workers, are forced into a situation of total dependence and impoverished workers are turned into bonded labourers.

6. The Government in response states that the transmigration programme is for transferring people from the densely populated areas (Java and Bali) to the less inhabited areas (in general on other islands), and opening new agricultural land. Industrial forest plantation may be managed by the Government, or by private enterprises or cooperatives, with 35-year concessions. Transmigrants are recruited on a voluntary basis. The available land is Government-owned unproductive land which has not yet been occupied, possessed or governed by any traditional local people. Wages may not be lower than the regional minimum wage.

7. The Committee refers to Recommendation No. 35 concerning indirect compulsion to labour and recalls the principles it lays down to guide the policy in endeavouring to avoid any indirect compulsion to labour. In deciding questions connected with the economic development of territories, particularly when deciding upon increases in the numbers and extent of agricultural undertakings, non-indigenous settlements or the granting of forest or other concessions, several factors should be taken into consideration. The factors include matters such as the amount of labour available, the capacities of the population and the evil effects which sudden changes in the habits of life and labour may have on the social conditions of the population. It is also desirable to avoid indirect means of artificially increasing the economic pressure upon populations to seek wage-earning employment, particularly by such means as imposing such restrictions on the possession, occupation, or use of land as would have the effect of rendering difficult the gaining of a living by independent cultivation.

8. While noting the information provided by the Government in its report, the Committee would ask the Government to provide information on any measures taken in the forestry sector to ensure that no conditions are created which would forcibly lead workers into a situation of bondage, total dependence or abusive exploitation: such measures might include, for example, inspections, investigation or supervision, particularly as regards wages actually paid, the operation of company stores, the system

of vouchers in use therein and other aspects of the conditions of work of indigenous people and transmigrants. The Committee asks the Government to provide any relevant reports on labour inspection in the field of interregional employment. It also asks the Government to provide information on the sanctions applicable in cases of abuse (*Article 25* of the Convention).

9. Finally, the Committee again asks the Government to provide information on the situation of workers in dangerous conditions on fishing platforms off the coast of Sumatra, where there is said to be forced child labour. As no information was included in the report, the Committee asks the Government to provide this information with its next report.

Jamaica (ratification: 1962)

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c), of the Convention. The Committee noted in its previous comments that, under section 155(2) of the Correctional Institution (Adult Correction Centre) Rules of 1991, no inmate may be employed in the service of, or for the private benefit of, any person, except with the authority of the Commissioner or in pursuance of special rules. The Committee notes, from the Government's report, that the Correctional Services Production (COSPROD) Holdings Limited, established in 1994, was created to manage the integration of the process of rehabilitation through skills training and productive utilization of the human resources in the correctional facilities. The Committee notes the Government's information that under the programme inmates work under the conditions of a freely accepted employment relation, with their formal consent and subject to guarantees regarding the payment of normal wages.

The Committee draws the Government's attention to its General Report of 1998 (particularly paragraphs 116-125), which recalls that any work exacted from any person as a consequence of a conviction in a court of law is exempted from the scope of the Convention, provided it is carried out under the supervision and control of a public authority and that such person is not hired to or placed at the disposal of private parties.

The Committee requests the Government to provide a copy of the rules governing inmate work in the framework of COSPROD and the practice of supervision of that work under the COSPROD programme, as well as any special rules under section 155(2) of the Correctional Institution (Adult Correction Centre) Rules of 1991, particularly with respect to the creation and the role of COSPROD.

Japan (ratification: 1932)

1. The Committee notes the Government's report in reply to its previous comments, as well as a number of observations received from workers' organizations. The matters raised in these comments, and addressed by the Government, concern two main issues, which are dealt with in turn.

I. Wartime "comfort women"

2. In its previous observations, the Committee took note of observations made by the Osaka Fu Special English Teachers' Union (OFSET) alleging gross human rights abuses and sexual abuse of women detained in so-called military "comfort stations" during the Second World War and the years leading up to it, when the women confined were forced to provide sexual services to the military. The Committee has found that this was contrary to the requirements of the Convention, that such unacceptable abuses should give

rise to appropriate compensation, but that it did not have the power to order relief. The Committee also stated that this relief could only be given by the Government and that in view of the time elapsed, it hoped that the Government would give proper consideration to the matter expeditiously.

3. In its last observation adopted at its session in 1996, the Committee noted the Government's position that, irrespective of whether or not there was a violation of the Convention, it has sincerely fulfilled its obligations under international agreements and, therefore, the matter had been settled between the Government of Japan and the other governments which are parties to the agreements. The Government stated that it had been expressing its apologies and remorse in this regard; and it has been providing the maximum support to the "Asian Women's Fund" (AWF), which was established in 1995 with the aim of achieving the atonement of the Japanese people to the former wartime "comfort women", and providing atonement money to them. The Committee noted the detailed information provided, including the fact that the Government has supported the operational cost of the AWF, as well as providing medical and welfare support through the use of government resources. The Committee expressed its trust that the Government would continue to take responsibility for the measures necessary to meet the expectations of the victims, and asked it to provide information on further action taken.

4. One of the workers' organizations (OFSET), in a letter dated 14 October 1998 together with enclosures, made the following points. The union states that the problem remains basically unchanged and that there has been no compensation paid by the Government and no apology based on legal responsibility towards the victims. The union provided information to the effect that the majority of the Korean, Taiwanese, Indonesian and Filipino "comfort women" have refused to accept monies from the AWF on the basis that money from the Fund is not compensation from the Government but consists of money raised by donations from private organizations. The union also indicated that five Filipino "comfort women" who have accepted AWF monies, have refused to accept the letter of apology sent by the Prime Minister and have returned it as not being a recognition of the Government admitting its official accountability for the abuses committed against them by the military. The union provided information about payments made by the Government of South Korea and Taiwan to women victims in their own countries who have refused AWF monies. The Korean Confederation of Trade Unions, in a communication dated 31 July 1998 together with enclosures, makes similar points. The trade union stated that the Government had not yet taken proper measures, as it had not changed its argument that the issue of military sexual slavery had been legally settled by Japan and the vicitimized Asian countries, and cited consideration of the matter by the present Committee, the United Nations and others. It noted that although some women had accepted funds from the AWF, most have rejected them, stating that this was "sympathy" money and not legal compensation.

5. The Committee was also provided with copies of a judgement, issued on 27 April 1997 by the Yamaguchi Lower Court, Shimoneshi Branch, Section 1. The case is one of the 50 suits filed in Japanese courts. The judge ordered the Government to pay three plaintiffs, former South Korean comfort women, 300,000 yen plus interest. The judgement was based in part on the present Convention, and principally on the failure of the Government to legislate a necessary law, where the failure to legislate infringed basic human rights, and compensation was ordered under the State Tort Liability Act.

6. The Korean Federation of Trade Unions noted that the compensation was small. It also indicated that the Government has appealed against the decision to a higher court,

that it could take ten to 20 years for appeal procedures to be exhausted and that the women were already advanced in age.

7. The Government reviews in its report its role in the establishment of the AWF and indicated that in the Philippines, the Republic of Korea and Taiwan, approximately 85 to 90 women received "atonement money" from the AWF and that some had expressed their gratitude in various ways. The Government also indicated that women who were given atonement money also received a letter of apology from the Prime Minister. The Government states that with the support of individuals, enterprises, trade unions and others more than 483 million yen has been donated to the AWF. In March 1997, it began providing financial support for facilities for the elderly in Indonesia, with priority to be given to those who state they are former "comfort women", as the Government of Indonesia has found it difficult to identify those who were concerned. It concluded an agreement on 16 July 1997 with a non-governmental group in the Netherlands for a project aimed at helping to enhance the living conditions of those who suffered incurable physical and psychological wounds during the war. The Government also reports efforts to make the historical facts better known through school education, and outlines measures to address contemporary issues concerning the honour and dignity of women. The Government has provided no information in relation to the above-mentioned judicial decision.

8. The observation received from the Japanese Trade Unions Confederation (JTUC-RENGO) adds that, as regards the Korean wartime "comfort women", the Government of the Republic of Korea has started providing support allowances to them on condition that the women concerned do not receive any donation from the AWF or, if they have, that they return it. JTUC-RENGO believes that "the settlement of this tragic history is in the hands of the Korean and Japanese Governments" and expects that "dialogue will lead to a final settlement of the problem".

9. The Committee notes this very detailed information. It notes further the report of the United Nations Special Rapporteur on Systematic rape, sexual slavery and slavery-like practices during armed conflict (UN document E/CN.4/Sub.2/1998/13, 22 June 1998), who examined inter alia the situation of "comfort women" and the liability of the Japanese Government. The Committee again repeats its trust that the Government will take responsibility for the measures necessary to meet the expectations of the victims. The rejection by the majority of "comfort women" of monies from the AWF because it is not seen as compensation from the Government, and that the letter sent by the Prime Minister to the few who have accepted monies from the AWF is also rejected by some as not accepting government responsibility, suggest that the expectations of the majority of the victims have not been met. The Committee requests the Government to take steps expeditiously, and also to respond on measures taken further to the court decision and any other measures to compensate the victims. With each passing year this becomes more urgent.

II. Wartime industrial forced labour

10. The Committee has also received observations from the Kanto Regional Council, All-Japan Shipbuilding and Engineering Union (in September and December 1997, and March 1998), as well as from the Tokyo Local Council of Trade Unions (Tokyo-Chiyo) in August and September 1998. These communications raised, for the first time in the ILO, concern about conscripted labourers from China and Korea in industrial undertakings, during the Second World War. It is stated by the Shipbuilding and Engineering Union that some 700,000 workers from Korea and some 40,000 from

occupied areas of China were conscripted as forced labourers and made to work under private-sector control in mines, factories and construction sites. Conditions of work were said to be very harsh, and many died. Though these workers had been promised pay and conditions similar to those of Japanese workers, they in fact received little or no pay, according to the allegations. The Union — supported by more than 35 other workers' organizations which signed the communication — asks that these workers receive compensation for unpaid wages, and damages, from the Government and from the companies that benefited. It indicates that, because of poor relations between the countries concerned and Japan for many years after the war, it was virtually impossible for individuals to make any claims against either the Government or the companies concerned until relations had been re-established. Tokyo-Chiyo has communicated a report said to have been drawn up by the Japanese Ministry of Foreign Affairs (MOFA) in 1946 entitled "Survey of Chinese Labourers and Working Conditions in Japan" intended to account to Chinese authorities after the war. The report disappeared, but was rediscovered in 1994, independently in China and in the United States. The report details very harsh working conditions, and brutal treatment including a death rate of 17.5 per cent, up to 28.6 per cent in some operations.

11. The Government states in its report in response to these observations that it has repeatedly acknowledged regret and remorse to the South Korean Government for damages and suffering caused through its colonial rule. The Government also indicated that it had similarly stated to China that it was keenly conscious of the serious damage it had caused to Chinese people in the war. The Government states that it has taken many positive steps towards establishing friendly relations with both China and the Republic of Korea. This includes high-level visits and accompanying statements and agreements as recently as October-November 1998. The Government states that it has furnished detailed information to both countries on the situation of conscripted labourers, including 110,000 Korean workers. It has concluded agreements with both countries, including legal settlements of the issue of reparations, property and claims relating to the Second World War, with the Republic of Korea in 1965 and with China in 1972. Negotiators from Japan and the Republic of Korea concluded during the discussions leading up to this agreement that the loss of documentation was so severe that only a general approach could be taken, and in consequence Japan and the Republic of Korea agreed that the problems of claims related to the war would be deemed to be completed and finally settled with the extension of $500 million in economic assistance from Japan to the Republic of Korea in 1965. The Government also indicated that it had provided to the Republic of Korea a total of 0.67 trillion yen by the fiscal year 1997 since 1965, making significant contributions to that country's economic growth. In addition the Government had provided assistance to China of a total of 2.26 trillion yen by the fiscal year 1997. The Government has also taken steps to make the historical record accurate. Neither of the other two Governments is requesting further compensation, but the Government indicates that some individual cases are now pending before Japanese courts.

12. The Committee has noted the information placed before it and the Government's response. The Committee notes that the Government does not refute the general contents of the MOFA report but instead points out that it has made payments to the respective governments. The Committee considers that the massive conscription of labour to work for private industry in Japan under such deplorable conditions was a violation of the Convention. It notes that no steps have been taken with a view to personal compensation of the victims, though claims are now pending in the courts. The Committee does not consider that government-to-government payments would suffice as appropriate relief to the victims. As in the case of the "comfort women", the Committee recalls that

it does not have power to order relief, and trusts that the Government will accept responsibility for its actions and take measures to meet the expectations of the victims. It requests the Government to provide information on the progress of the court cases and on action taken.

Kenya (ratification: 1964)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. Over a number of years the Committee has been referring to sections 13 to 18 of the Chief's Authority Act (Cap. 128) according to which able-bodied male persons between 18 and 45 years of age may be required to perform any work or service in connection with the conservation of natural resources for up to 60 days in any year. On many occasions it expressed the hope that these sections would be either repealed or amended so as to meet the criteria for "minor communal services" which are exempted from the scope of the Convention under *Article 2, paragraph 2(e), of the Convention.*
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> The Committee previously noted the Government's intention to repeal or to amend sections 13 to 18 of the Act, as it was recognized that in law the aforementioned sections are not in full conformity with the Convention. The Committee noted that, in its latest report received in September 1996, the Government reaffirms its intention to repeal the Chief's Authority Act and to replace it with the Administrative Officer's Authority Act. The Committee hopes that the new Act will be adopted in the near future and that it will be in conformity with the Convention. It requests the Government to supply a copy of the Administrative Officer's Authority Act, as soon as it is adopted.
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> 2. The Committee noted the Government's statement in its previous report that the Government is not aware of any cases of forced labour in so far as soil conservation and on-farm tree planting are concerned. It also noted the provisions governing the Presidential Commission on Soil Conservation and Afforestation, as well as a report on the results achieved by the Commission supplied by the Government.

Liberia (ratification: 1931)

I. The Committee notes that the Government has not yet been in a position to send its report and refers to its general observation. The Committee would appreciate complete and detailed information in the Government's next report on the current practice and legal situation with respect to the following points:

1. *Article 1 of the Convention.* Would the Government please indicate the provisions in any legal text in force prohibiting forced or compulsory labour in all its forms and send a copy of such provisions, and explain the situation of servants and military career personnel, including under what conditions they may resign from their work if they so wish?

2. *Article 2.* (a) Would the Government please indicate the legal provisions ensuring that only work or service of a purely military character can be exacted in virtue of compulsory military service law?

(b) Would the Government please indicate the forms of work or service which are part of the normal civic obligations in the country, and whether there are any forms of local public works?

(c) Would the Government please send a copy of any provisions applicable to work or service undertaken by prisoners convicted by a court of law?

(d) Would the Government please indicate the provisions governing work or service exacted in cases of emergency, such as threatened calamity (fire, flood, famine, violent epidemic or epizootic diseases, etc.) and in general any circumstance that would endanger the existence or well-being of the whole or part of the population?

(e) Would the Government please indicate what is the practice with respect to minor communal services in the interest of the community?

3. *Article 25*. Would the Government please indicate under what provisions the illegal exaction of forced or compulsory labour is punishable as a penal offence and what is the practical application of such provisions?

II. The Committee has been informed that a communication of the International Confederation of Free Trade Unions dated 22 October 1998 concerning allegations of forced child labour in south-eastern Liberia was forwarded to the Government for comment. The Committee asks the Government to send its observations on the matter with its next report, so that the Committee may deal with the substance at its next session.

Madagascar (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. *Prison labour*. For several years the Committee has drawn the Government's attention to Decree No. 59-121 of 27 October 1959 (amended by Decree No. 63-167 of 6 March 1963) to establish the organization of the prison services, under which prison labour may be hired to private undertakings and prison work may be imposed on persons detained pending trial. The Committee requested the Government to repeal or to amend the legislation in question so as to bring it into conformity with the Convention.
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> In the Government's previous reports, the Committee noted with interest the renewed statements to the effect that the hiring of prison labour had been abolished in Circular No. 10-MJ/DIR/CAB/C of 1 July 1970 and that people detained pending trial were no longer forced to undertake prison labour. The Committee also noted the repeated information provided by the Government according to which the revision of Decree No. 59-121 was being studied.
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> In its last report received in 1996, the Government indicates that the hiring of prison labour is still justified by the general economic recession prevailing in the country, since the administration has only a limited budget available which does not allow it to guarantee the vital minimum (food and shelter) for the prison population. The Government adds that the hiring of prison labour is permitted under section 70 of Decree No. 59-121, provided that the work undertaken is for the good of the country.
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> The Committee reminds the Government that under *Article 2, paragraph 2(c), of the Convention*, a prisoner shall not be hired or placed at the disposal of private individuals, companies or associations even if they are responsible for carrying out public works. The Committee also refers the Government to the explanations provided in paragraphs 97-101 of its General Survey of 1979 on the abolition of forced labour.
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> The Committee hopes that the Government will take the necessary measures to bring the legislation into conformity with the Convention, in particular by prohibiting, on the one hand, the hiring of prison labour to private individuals and, on the other hand, the imposition of prison labour on people detained pending trial.
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> 2. *National service*. In its previous comments, the Committee referred to Act No. 68-018 of 6 December 1968 and to Ordinance No. 78-002 of 16 February 1978 relating to the general principles of national service, which define national service as the compulsory participation of all Malagasies in national defence and in the economic and social development of the country. The Committee also noted various texts which either referred to the powers of the military committee for developments with regard to work in support of the local communities or laid down the procedure for incorporation into national service of young school-leavers and recruits of a particular age group, or changed the name of the units

responsible for development (development forces), subject to the threat of various penalties and sanctions.

The Committee drew the Government's attention to the fact that under Decree No. 92-353 fixing the conditions for recruitment and methods for enforcing the obligations of national service on school-leavers, the Voluntary Nature Act in question relates not to the performance of national service, but to the sector of assignment (outside the people's armed forces).

Furthermore, the Committee notes that Decree No. 92-353 was adopted pursuant to sections 2 and 4 of Ordinance No. 78-002. Under Act No. 68-018 and Ordinance No. 78-002, national service is defined as the compulsory participation, imposed for a period of up to two years, of part of the population, namely young Malagasies from 18 to 35 years of age, in the activities of national defence and the economic and social development of the country, under the threat of various penalties and sanctions.

The Committee reminds the Government once again that forcing young people to participate in development work as part of compulsory military service — or as an alternative thereto — is incompatible with the Forced Labour Convention. Military service is excluded from the scope of the Convention only if it is confined to "work of a purely military character". In this regard, the Committee refers the Government to the explanations given in paragraphs 25, 27, 28, 29, 31, 32, 49 and 56-61 of its General Survey of 1979 on the abolition of forced labour in which it provides clarifications as to the link between certain compulsory programmes involving the participation of young people in activities for the economic and social development of the country, and the Convention.

The Committee again expresses the hope that the Government will take the necessary measures to bring the legislation into conformity with the Convention, in particular by ensuring that young boys and young girls participate in national service on a voluntary basis and that the services required under the military service laws are of a purely military character.

The Committee notes the information provided by the Government according to which the political and social context has changed considerably since 1978 and consequently, the fact that Ordinance No. 78.002 of 16 February 1978 to introduce national service has lapsed may be invoked. It therefore requests the Government to repeal Ordinance No. 78.002 and Decree No. 92-353 so as to ensure that the Convention is respected.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Mauritania (ratification: 1961)

The Committee notes that the Government's report has not been received.

Article 1, paragraph 1, and Article 2, paragraph 1, of the Convention. 1. The Committee noted that a communication from the World Confederation of Labour (WCL) was received in October 1997, which included an observation on the application of the Convention. According to that observation, the Convention is violated through the persistence of practices equivalent to slavery, despite the Declaration of 1980 abolishing slavery. This communication was transmitted to the Government in November 1997 for comment. The Committee again requests the Government to transmit its comments on the above communication in its next report.

2. In this respect, further to its previous comments, the Committee recalls that it has been examining issues related to the condition of former slaves and the persistence of former slave-like relations for several years. The Committee noted that slavery had been abolished by several texts. It also noted that, according to the Government, isolated cases of its persistence in practice might still be found. In this respect, the Committee notes a transaction which occurred in December 1997 in Timzine, in the Kobony Department, in

the region of Hodh el Gharby, which consisted of the cession of 40 persons to pay a debt after a death. The transaction took place in the presence of a cadi. The purchaser freed the persons who had been acquired in this manner. The Committee welcomes this act of liberation. However, it wishes to express once again its great concern at the persistence of such situations.

3. The Committee considers that persons who are in a situation in which their relations are similar to those of a slave to a master, and who are not at liberty to decide on their own course of action, are, due to these conditions, in a situation in which they perform work for which they have not offered themselves of their own free will and which could not arise under a freely concluded contract of employment. The Committee notes that forced labour is prohibited by the Labour Code, but that the Code only applies to relations between employers and workers. The Committee requests the Government to take measures to extend the prohibition on any form of forced labour to work relationships such as may have persisted from historic times. For example, measures could be taken to extend the prohibition of forced labour contained in section 3 of the Labour Code to *all* forms of work relationships, even where they are not covered by a contract. It would also be possible to provide explicitly that, subject to the exceptions admitted by the Convention, *any* situation in which individuals provide work or a service for which they have not offered themselves of their own free will is illegal, may be brought before a civil court and is punishable as a penal offence, in accordance with *Article 25* of the Convention. The Committee requests the Government to provide information in its next report on the measures envisaged to give effect to the Convention on this point.

4. Following the adoption of Act No. 71059 of 25 February 1971 issuing rules to organize civil protection, which limits the powers to requisition labour to specific exceptional circumstances, corresponding to the definition of cases of emergency set out in *Article 2(d)* of the Convention, the Committee requested the Government to take measures to repeal the Ordinance of 1962 (which confers very wide powers on local leaders to requisition labour). The Committee noted in a recent comment the Government's statement that the above text had not yet been amended. The Committee concludes that the Ordinance is still in force: for reasons of legal security and in order to ensure the observance of the Convention, it requests the Government to take steps to explicitly repeal the above text in the near future and to provide information in its next report on the measures adopted in this respect.

5. The Committee noted that Act No. 70-029 of 23 January 1970 provides for the possibility of requisitioning labour outside the cases of emergency admitted by the Convention. Under sections 1 and 2 of the above Act, various categories of individuals may be required to exercise their functions when circumstances so require, particularly to ensure the functioning of a service that is considered to be essential to meet a need of the country or the population. The Committee requests the Government to take measures to limit recourse to the powers of requisitioning set out in the Act to cases of emergency, as defined in *Article 2, paragraph 2(d)*, of the Convention. The Committee requests the Government to indicate the measures which have been taken to amend this Act in order to bring the legislation fully into conformity with the Convention on this point.

Morocco (ratification: 1957)

1. *Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(a), of the Convention.* The Committee notes with satisfaction that the provisions relating to civic service which had been the subject of previous comments were repealed by the Dahir issuing Act No. 46-97-1 of 4 Chaoual 1417 (12 February 1997), confirming the practice

according to which persons called up are made available to public administrations only if they so request. The Committee is once again drawing attention to another aspect of these provisions of the Convention in a direct request.

2. *Article 2, paragraph 2(c)*. The Committee previously requested the Government to repeal or amend the Dahir of 26 June 1930, which allowed prisoners to be assigned to and employed by private enterprises. The Committee noted that the Government had always indicated that the law in question had not been applied since independence. The Committee notes the information in the Government's last report to the effect that the Bill on penal establishments which prohibits the employment of prisoners by private enterprises or for the benefit of private individuals is being studied by a joint committee consisting of representatives of the Justice Department and the General Secretariat of the Government. The Committee takes note of the Government's statement to the effect that the Bill will be adopted in the very near future and that a copy will be communicated as soon as it has been finalized. The Committee hopes that the Bill will be adopted swiftly and that it will be possible to bring the legislation into conformity with the Convention in this area.

3. *Article 2, paragraph 2(d)*. The Committee previously drew the Government's attention to a number of legislative texts which authorized the calling up of persons and the requisitioning of goods in order to satisfy national needs (the Dahirs of 10 August 1915 and 25 March 1918, as contained in the Dahir of 13 September 1938 and reintroduced by Decree No. 2-63-436 of 6 November 1963). The Committee requested the Government to take steps to ensure that calling up could only take place in situations endangering the existence or well-being of the whole or part of the population. The Committee notes that according to the Government, the only cases in which the provisions allowing the requisitioning of goods and the calling up of persons may be invoked are emergencies within the meaning of the Convention; and recourse to such measures must be based on the necessity of satisfying urgent needs, under circumstances of extreme difficulty, in order to protect the nation's vital interests (for example, war, natural disasters, major accidents). The Committee notes that in order to formalize this practice in legislation, so as to be in conformity with the spirit of the Convention, the Government advises that the Department of Employment will inform the competent authorities. The Committee hopes that the Government will take the necessary measures in the very near future to give legislative expression to this practice, by repealing or amending the aforementioned provisions. It requests the Government to provide information in its next report on any progress made in this area.

4. *Article 25*. In its previous comments, the Committee drew attention to the absence in national legislation of any penal sanctions on persons guilty of the illegal exaction of forced labour. The Committee recalled that this Article of the Convention stipulates that the illegal exaction of forced or compulsory labour must be subject to really adequate and strictly enforced penal sanctions. The Committee takes note of the Government's statement that the draft Labour Code which formalizes the prohibition of the illegal exaction of forced labour provides penal sanctions of a sufficiently deterrent nature, to ensure the application of the Convention, and that it will be discussed on a tripartite basis in the very near future. The Committee hopes that the draft Labour Code will be adopted soon. It requests the Government to provide in its next report comprehensive information on any progress made in the discussions and a copy of the Labour Code as soon as it is adopted.

Myanmar (ratification: 1955)

1. The Committee recalls that a complaint under article 26 of the Constitution was submitted in 1996, alleging failure by the Government of Myanmar to observe the present Convention, and that a Commission of Inquiry was established to examine the complaint. The Committee recalls that it has made comments on the observance of the Convention for many years, and that an earlier representation under article 24 of the Constitution was submitted in 1993, alleging violation of the Convention, and concluded in 1994 with the finding that there were substantial violations. The Committee notes further that the Commission of Inquiry completed its work in August 1998, and that its report was submitted to the Governing Body of the International Labour Office at its 273rd (November 1998) Session.

2. The Committee notes that, at the conclusion of its work, the Commission of Inquiry adopted detailed conclusions and recommendations, including the following:

> 528. There is abundant evidence before the Commission showing the pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military for portering, the construction, maintenance and servicing of military camps, other work in support of the military, work on agriculture, logging and other production projects undertaken by the authorities or the military, sometimes for the profit of private individuals, the construction and maintenance of roads, railways and bridges, other infrastructure work and a range of other tasks, none of which comes under any of the exceptions listed in *Article 2(2) of the Convention*.

3. The Commission's report concludes further that "Forced labour in Myanmar is widely performed by women, children and elderly persons as well as persons otherwise unfit for work" (paragraph 531). It adds:

> 533. Forced labour is a heavy burden on the general population in Myanmar, preventing farmers from tending to the needs of their holdings and children from attending school; it falls most heavily on landless labourers and the poorer sections of the population, which depend on hiring out their labour for subsistence and generally have no means to comply with various money demands made by the authorities in lieu of, or over and above, the exaction of forced labour. The impossibility of making a living because of the amount of forced labour exacted is a frequent reason for fleeing the country.
>
> 534. The burden of forced labour also appears to be particularly great for non-Burman ethnic groups, especially in areas where there is a strong military presence, and for the Muslim minority, including the Rohingyas.
>
> 535. All the information and evidence before the Commission shows utter disregard by the authorities for the safety and health as well as the basic needs of the people performing forced or compulsory labour. Porters, including women, are often sent ahead in particularly dangerous situations as in suspected minefields, and many are killed or injured this way. Porters are rarely given medical treatment of any kind; injuries to shoulders, backs and feet are frequent, but medical treatment is minimal or non-existent and some sick or injured are left behind in the jungle. Similarly, on road building projects, injuries are in most cases not treated, and deaths from sickness and work accidents are frequent on some projects. Forced labourers, including those sick or injured, are frequently beaten or otherwise physically abused by soldiers, resulting in serious injuries; some are killed, and women performing compulsory labour are raped or otherwise sexually abused by soldiers. Forced labourers are, in most cases, not supplied with food ...
>
> 536. In conclusion, the obligation under *Article 1, paragraph 1, of the Convention* to suppress the use of forced or compulsory labour is violated in Myanmar in national law, in particular by the Village Act and the Towns Act, as well as in actual practice in a widespread and systematic manner, with total disregard for the human dignity, safety and health and basic needs of the people of Myanmar.

537. Concurrently, the Government violates its obligation under *Article 25 of the Convention* to ensure that the penalties imposed by law for the illegal exaction of forced or compulsory labour are both really adequate and strictly enforced. While section 374 of the Penal Code provides for the punishment of those unlawfully compelling any person to labour against the will of that person, that provision does not appear to be ever applied in practice, even where the methods used for rounding up people do not follow the provisions of the Village Act or the Towns Act, which are in any event never referred to in practice.

538. A State which supports, instigates, accepts or tolerates forced labour on its territory commits a wrongful act and engages its responsibility for the violation of a peremptory norm in international law. Whatever may be the position in national law with regard to the exaction of forced or compulsory labour and the punishment of those responsible for it, any person who violates the prohibition of recourse to forced labour under the Convention is guilty of an international crime that is also, if committed in a widespread or systematic manner, a crime against humanity.

4. The Commission of Inquiry has made the following recommendations:

539. In view of the Government's flagrant and persistent failure to comply with the Convention, the Commission urges the Government to take the necessary steps to ensure:

(a) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Forced Labour Convention, 1930 (No. 29) as already requested by the Committee of Experts on the Application of Conventions and Recommendations and promised by the Government for over 30 years, and again announced in the Government's observations on the complaint. This should be done without further delay and completed at the very latest by 1 May 1999;

(b) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military. This is all the more important since the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village Act or Towns Act. Thus, besides amending the legislation, concrete action needs to be taken immediately for each and every of the many fields of forced labour examined in Chapters 12 and 13 above to stop the present practice. This must not be done by secret directives, which are against the rule of law and have been ineffective, but through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. Also, action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required;

(c) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, in conformity with *Article 25* of the Convention. This requires thorough investigation, prosecution and adequate punishment of those found guilty. As pointed out in 1994 by the Governing Body committee set up to consider the representation made by the ICFTU under article 24 of the ILO Constitution, alleging non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), the penal prosecution of those resorting to coercion appeared all the more important since the blurring of the borderline between compulsory and voluntary labour, recurrent throughout the Government's statements to the committee, was all the more likely to occur in actual recruitment by local or military officials. The power to impose compulsory labour will not cease to be taken for granted unless those used to exercising it are actually brought to face criminal responsibility.

540. The recommendations made by the Commission require action to be taken by the Government of Myanmar without delay. The task of the Commission of Inquiry is completed by the signature of its report, but it is desirable that the International Labour Organization should be kept informed of the progress made in giving effect to the recommendations of the Commission. The Commission therefore recommends that the Government of Myanmar should indicate regularly in its reports under article 22 of the Constitution of the International

Labour Organization concerning the measures taken by it to give effect to the provisions of the Forced Labour Convention, 1930 (No. 29), the action taken during the period under review to give effect to the recommendations contained in the present report. In addition, the Government may wish to include in its reports information on the state of national law and practice with regard to compulsory military service.

5. The Committee notes also that the Government stated, in its response of 23 September 1998 to the Director-General after receiving the report, that it considers the allegations unfounded and politically motivated. It indicates, however, that "the Myanmar authorities have reviewed the Village Act and the Towns Act several times on their own initiatives so as to bring in line with present-day conditions in the country as well as to fulfil Myanmar's obligations ... The authorities, therefore, will do their utmost to complete the process within the time-frame referred to in the Report. ... (W)e do not see any difficulty in implementing the Recommendations contained in paragraph 539 of the Report."

6. The Committee notes the conclusions and recommendations of the Commission of Inquiry, which confirm and expand its own previous conclusions as to the Government's failure to comply with this fundamental Convention, the findings of the Conference Committee on the Application of Standards, as well as the findings of the Governing Body when it examined the representation. It notes further the Government's expression of willingness to implement the recommendations contained in the report of the Commission of Inquiry. It urges the Government to do so, not simply in order to apply the Convention, but most of all to save its own citizens from the suffering and the impediments to development which have been so clearly outlined in the Commission's report. It requests the Government to provide detailed information on the measures it is taking to apply the recommendations and the Convention, and urges it to have recourse to the assistance of the International Labour Office in this effort. In this respect, it notes that when it considered the report of the Commission of Inquiry, the Governing Body asked the Director-General to submit an interim progress report on the implementation of the Convention to the Governing Body at its 274th (March 1999) Session; the Committee expresses the firm hope that the Government will very shortly be in a position to indicate, to the Governing Body, to the Conference and to the present Committee, that it has complied fully with the Convention.

[The Government is asked to supply full particulars to the Conference at its 87th Session and to report in detail in 1999.]

Netherlands (ratification: 1933)

The Committee notes the Government's report.

1. *Article 1(1) and Article 2(1) of the Convention.* Further to its previous observations, the Committee notes with satisfaction that a provision of section 6 of the Extraordinary (Employment Relations) Decree, 1945, under which workers were legally required to obtain the approval of the District Employment Office for the termination of their employment, has been repealed by the Act concerning Flexibility and Security (Stb. 300), of 14 May 1998, which was due to come into force on 1 January 1999.

2. *Article 2(2)(a).* In its previous observation, the Committee noted a communication from the Netherlands Trade Union Confederation (FNV) dated 18 August 1995 concerning the use of conscripts for non-military activities. The Committee has noted from the Government's report received in July 1996 that the position of conscripts was to be reviewed in the light of the Convention, and that compulsory national service would end on 1 January 1997. Since the Government's subsequent reports received in March

1997 and August 1998 contain no new information on this subject, the Committee asks the Government to confirm that the practice in question has been ended.

Pakistan (ratification: 1957)

1. The Committee notes the Government's reports in relation to *Article 1(1) and Article 2(1) and (2) of the Convention*. It also notes the discussions which took place at the Conference Committee on the Application of Standards in June 1997, as well as the comments of the All Pakistan Federation of United Trade Unions (APFUTU), received in May 1997. The Committee further notes information received from the ILO's International Programme for the Elimination of Child Labour (IPEC).

Bonded child labour

2. The Committee recalls the serious problems brought up in its previous observations and discussed several times in the Conference Committee. It notes that in 1997 the Conference Committee took note of the detailed information provided by the Government representative and the exhaustive discussions which had taken place; it also noted that the Government had adopted a certain number of measures aimed at eliminating forced labour, but that a large number of questions were still pending concerning the practical impact of the measures taken.

3. In this connection, the Committee notes with interest that, shortly before its session, the Government concluded an agreement with the International Labour Office and IPEC for the elimination of child labour in the carpet-making industry. The Committee looks forward to receiving detailed information in the Government's next report of the steps so far taken to implement this agreement.

4. *Magnitude of the problem.* Further to its previous observation the Committee notes the information provided by the Government in its reports and to the Conference Committee concerning particularly the Child Labour Survey, conducted with the technical assistance of IPEC. It notes from the statistics in the survey, as well as other comprehensive figures provided by the Government, that there are between 2.9 million and 3.6 million child labourers (between the ages of five and 14) in the country. While the Government has stated that some of the estimates of bonded child labour to which the Committee has previously referred are exaggerated, it has provided no estimate of its own. It would appreciate if the Government would continue to provide reliable figures collected at the district, provincial and federal levels, whether through government agencies or institutions or through organizations, on the number of inspections carried out, the number of prosecutions, the number of convictions under the Employment of Children Act, 1991, and Employment of Children Rules, 1995, and on the number of inspections, prosecutions and convictions under the Bonded Labour System (Abolition) Act, 1992, and the Bonded Labour System (Abolition) Rules, 1995. The Committee hopes that the Government, which states that it has taken a number of measures to implement these Acts and Rules, is now in a position to give full, detailed and documented information on their practical application.

5. The Committee notes with interest that the Government has taken various measures, on its own initiative and in cooperation with IPEC, the United Nations Children's Fund (UNICEF), the European Union and others, as well as international and national NGOs, aimed at eliminating child labour including bonded child labour. The Committee notes in particular the various awareness campaigns and programmes already completed. It notes, from the Government's report and from other sources, that the present Convention and legal texts on child and bonded labour have been translated into

Urdu and Sindhi. The Committee hopes the Government will communicate further information on other measures taken, at both federal and provincial levels, to increase awareness and to broaden publicity among the general public and in various economic sectors with a view to eliminating child labour and bonded labour.

6. In its previous observation, the Committee observed that petitions had been filed in the Shariah Court to declare sections 6 and 8 of the Bonded Labour System (Abolition) Act of 1992 as *ultra vires* Islamic injunctions. According to the Government representative at the Conference Committee in 1997, the Supreme Court ruling of 1988, which pronounced bonded labour as unconstitutional "ensured that the 1992 Act continued to be implemented". From the Government's report, it appears that the above-mentioned petitions are still pending and that no decision has been given by the court. The Government states that it will have to defend the existing law as validly enacted. Please indicate whether the pending of the hearing of petitions affects in any manner the current application of the 1992 Act, and send a copy of the court ruling as soon as it is issued.

7. The Committee notes that an Advisory Committee on Child and Bonded Labour has been set up, comprised of representatives of the Ministries of Labour, Foreign Affairs, Commerce and the private sector to follow up on action taken and to provide advice on comprehensive action plans for the elimination of child and bonded labour. The Committee requests the Government to communicate any reports or other documentation adopted by the Advisory Committee, particularly on follow-up actions. Please also provide information on its mandate and impact.

8. In its previous direct request, the Committee had asked the Government to provide copies of the reports of the Human Rights Commission of Pakistan and of the National Commission on Child Welfare and Development. As this information was not received, the Committee again asks the Government to send a copy of the latest reports of these two Commissions, or relevant excerpts of those reports relating to child and bonded labour.

9. The Committee notes that, to facilitate the enforcement of the Employment of Children Act, 1991, and the Bonded Labour (Abolition) Act, 1992, rules have been formulated with the technical assistance of ILO-IPEC. Notifications have followed, at federal and provincial levels, which empower magistrates, including district magistrates and additional district magistrates to file cases or try offences under the Acts. The Government indicates however that the district administration can take cognizance of offences only if complaints are lodged with the Vigilance Committees (see below). Please explain how the Vigilance Committees and the magistrates cooperate, and communicate detailed information on the number and character of cases filed and the offences tried by district magistrates. Please also indicate what measures have been taken to investigate and prosecute those who are involved — in whatever capacity — in the continuation of bonded labour practices.

10. The Committee notes that, after the adoption of the Bonded Labour (Abolition) Rules, 1995, the composition of the Vigilance Committees which were established to ensure that the objectives of the related Act were achieved, has been enlarged and strengthened. The Government representative stated at the Conference Committee in 1997, that some of these committees were not very effective and might need to be reinforced; yet they did provide an institutional framework in the provinces for the investigation and monitoring of bonded labour. In its last report, the Government states that according to the provincial governments, the Vigilance Committees are functioning well and that their operation is being supervised by the Home Departments of the Provinces. Furthermore, the Ministry of Labour has constituted four monitoring teams to assess the working of

institutions dealing with child and bonded labour across the country, and to provide feedback to the Government. The teams have held meetings with the Labour and Home Secretaries of the Provinces and District Vigilance Committees and paid visits to rehabilitation centres. These meetings were attended by representatives of workers' and employers' organizations. Two monitoring teams, for Baluchistan and the North-West Frontier Province, have submitted their reports, and the other two were in the process of finalizing theirs at the time the report was submitted. The Committee asks the Government to indicate what measures have been taken to reinforce the Vigilance Committees in order to render them more effective, and to communicate the reports by the monitoring teams.

11. Further to its previous observation on the matter, the Committee notes that the Worker members of the Conference Committee appealed to the Government to include representatives of employers' and worker's organizations as well as non-governmental organizations devoted to the elimination of bonded labour, in the machinery at district and local levels, to implement the Bonded Labour (Abolition) Act, 1992. The Committee also notes that the APFUTU asked in its comments that trade unions be involved directly in Vigilance Committees. The Committee notes that representatives of workers' and employers' organizations have been associated in the meetings of the monitoring groups. It asks the Government to comment on the participation of workers' and employers' organizations in the application of the 1992 Act and the 1995 Rules, as the effectiveness of the Vigilance Committees requires a participation by all to achieve a coordinated and expeditious approach to this serious problem.

12. The Committee also refers the Government to its observation under the Minimum Age (Industry) Convention (Revised), 1937 (No. 59).

Bonded labour generally

13. The Committee also asks the Government to provide detailed information in its next report on the measures taken to eliminate *adult* bonded labour, which appears still to exist in large numbers. Referring to its previous observation, the Committee notes the information supplied by the Government at the Conference Committee and in its latest report in relation to inspections carried out, to numbers of labourers released from bondage, and to rehabilitation centres. It asks the Government to communicate in its next report further detailed information, at federal, provincial, district and local levels, on the identification, release and rehabilitation of bonded labourers — both children *and* adults — under the Bonded Labour (Abolition) Act, 1992, as well as precise information and examples on the sanctions imposed on offenders, under section 14 of the Act and section 107 of the Penal Code *(Article 25 of the Convention)*.

Restrictions on termination of employment

14. Referring to its previous observation on the federal and provincial Essential Services Acts, the Committee recalls that certain provisions of those Acts render a person in government employment who terminates employment without the consent of the employer to be subject to imprisonment for up to one year, notwithstanding any expressed or implied term in the contract providing for termination with notice. These provisions may be extended to other classes of employment (Essential Services (Maintenance) Act, 1952, sections 2, 3(1)(b) and explanation 2, section 7(1); West Pakistan Essential Services Act, 1958 (as in force in Baluchistan and the North-West Frontier Province); Punjab and Sindh Essential Services (Maintenance) Acts, 1958). The Committee notes from the Government's statement that the application of the Acts has been narrowed further and that the number of establishments considered critical for the security of the country and

the welfare of the community has been further reduced. The Committee notes that the list mentioned by a Government representative at the Conference Committee in 1998 in a discussion on Convention No. 87 has been reduced to five categories, three of which dealt with electricity, and that the other two were the Kahuta Research Laboratories and the Pakistan Security Printing Corporation and Security Papers Ltd., Karachi.

15. The Committee notes the Government's statement, repeated in its latest report, that it would take the necessary steps to meet the requirements of the Convention. It recalls that the Government has repeatedly indicated its intention to amend the provisions of the Act so that an employee may terminate his employment in accordance with the express or implied terms of his contract, in order to eliminate restrictions on the freedom of workers to leave their employment. It recalls from the Government's report in 1996, that the matter had been examined by a tripartite task force on labour, which submitted its report to the Cabinet, and that the recommendations were then under active consideration by the Government. No information on the matter was given either at the Conference Committee, which discussed the present Convention in 1997, or in the latest Government's report. The Committee therefore once again asks the Government to indicate what measures are envisaged or have been taken to amend the Essential Services (Maintenance) Acts in order to bring them into conformity with the Convention. (The Committee also comments on essential services in relation to the same laws under Conventions Nos. 87 and 105.)

16. The Committee is addressing a request directly to the Government on other matters.

Panama (ratification: 1966)

1. *Article 1(1) and Articles 2(1) and (2)(c) of the Convention.* The Committee refers to its previous observations and the discussion in the Conference Committee in 1995 regarding sections 873, 878, 882, 884 and 887 of the Administrative Code and Act No. 112 of 1974. Those provisions empowered police chiefs to impose administrative sentences, including labour on public works and detention, contrary to the Convention. The Committee now notes with interest that Act No. 21 of 22 April 1998 has repealed the offending provisions of sections 878, 882 and 887 of the Code with the intention of bringing it into conformity with the Convention. It would be grateful if the Government would indicate whether, in law and in practice, these repeals have the effect of ensuring that no work or service may be exacted by virtue of the administrative powers still exercised by police chiefs, or by the President, governors or mayors.

2. *Article 2(1).* The Committee refers to its observation under Convention No. 105, concerning the use of forced or compulsory labour as a means of labour discipline for seafarers. It recalls the requirements also of the present Convention as regards the right of workers to free choice of employment and thus the right to terminate their employment. In its General Survey of 1979 on the abolition of forced labour, paragraphs 67 to 73, the Committee explained in particular on paragraph 69 the position relating to seafarers, who should be allowed upon giving reasonable notice to put an end to even indefinite contracts of employment without having to show any particular reason. The Committee hopes that the revision of the Maritime Labour Bill to which the Government has referred will take full account of the present Convention.

Paraguay (ratification: 1967)

Article 1(1) and Article 2(1) of the Convention. 1. The Committee's earlier observations concerned section 39 of Act No. 210 of 1970, which makes work compulsory for all detainees: under *Article 2(2)(c) of the Convention*, work or services may only be exacted from prisoners or detainees as a consequence of a conviction in a court of law. In its report received in June 1997, the Government repeated that the National Parliament had still not enacted legislation to ensure compliance with the Convention on this point. Since the Government's report has not been received in 1998, the Committee once more expresses the hope that the necessary measures to correct this long-standing inconsistency will finally be taken, and that the Government will also describe the practical situation in this respect as regards unconvicted detainees.

2. The Committee notes the information transmitted by the World Confederation of Labour (WCL) in November 1997. This information refers to the circumstances and conditions of work of indigenous people in particular on ranches. The circumstances described suggest a widespread practice of indigenous ranch workers being forced into a cycle of working to pay off debts incurred in the ranch stores for purchasing basic food supplies and other needed goods at exploitative prices. This, together with conditions in which wages are either not paid or are paid at the end of a contract, means that, to survive, the debts are incurred and they are forced to work to pay off the debts. The information also refers to the very poor treatment of indigenous people on ranches.

3. The Committee notes that this situation would appear to contravene *Articles 1 and 2(1)* of the Convention as it in effect gives rise to exaction of work under menace of penalties. The Committee hopes that the Government will provide its response to the Committee on the practices referred to in the WCL communication in relation to these matters. The Committee will take up this matter in relation to the Indigenous and Tribal Peoples Convention, 1989 (No. 169), ratified by Paraguay, for which the Government also has not yet sent a report.

Peru (ratification: 1960)

The Committee takes note of the report sent by the Government in November 1996 and its current report. The Committee recalls that the case in question was discussed by the Conference Committee on the Application of Standards in 1993, when it noted a number of grave violations of the Convention and decided to resume its discussions at a later date. In this regard, the Committee takes note of the comments made by the World Confederation of Labour (WCL) in October 1997 and the Government's reply in November 1998.

1. The Committee notes that the comments made by the WCL relate to forced labour practices (slavery, debt bondage or actual bondage) affecting indigenous peoples especially in the Atalaya and Ucayali regions. According to the WCL, the communities most affected by these practices are the Ashaninka communities living in the Alto Ucayali between Atalaya and Bolognesi. The forms of forced labour to which they are subjected are centred on agriculture, cattle raising and logging. The most common form of forced labour affecting the Ashaninkas is debt bondage through a system known as "*enganche o habilitación*" by which indigenous workers are provided with means of subsistence and work, creating a debt which the worker has to pay off by producing goods or services. The debts may be short-term and subject to a contract, or permanent, forcing workers to live within the confines of the hacienda, forming a kind of feudal area in which a number of indebted workers work and live without having the means to pay off their debts.

2. The Committee notes that the Government's reply does not contain any details concerning the WCL's comments which, according to the Government, relate to incidents in the Atalaya region which have since been remedied. In this regard, the Committee urges the Government to provided detailed information on the allegations that have been presented, in particular concerning the practice of "*enganche o habilitación*" which has been the subject of comment for a number of years. The Committee requests the Government to supply information on the measures that it intends to take to remedy the practices of forced labour prohibited by the Convention, in particular debt bondage, which mostly affects the Ashaninka communities of Atalaya and Ucayali.

3. In its previous observation concerning the indigenous communities of Atalaya, the Committee asked the Government to take the necessary measures to eradicate the various practices equivalent to forced labour within the meaning of *Article 1, paragraphs 1 and 2, of the Convention*, in particular debt bondage, certain forms of deceitful or violent recruitment of labour, subhuman conditions of work and the exploitation of children in the indigenous communities of Atalaya. According to the Government's report of 1996, the Atalaya Labour and Social Promotion Zone was established by Supreme Resolution No. 056-94-TR of September 1994. The Committee requests the Government to provide information on the number of cases brought before the Permanent Labour Authority of the Zone concerning practices of forced labour involving minors and other persons, including members of the indigenous or native communities, and the sanctions imposed on offenders in accordance with *Article 25*.

4. In its previous report, the Government indicated that the General Directorate of Labour and Social Promotion of Ucayali had started a joint inspection programme coordinated between the judicial authority, police, Public Ministry, Ministry of Agriculture and Prefecture. These inspections in the Atalaya region revealed that the region has over 100 cattle ranches and lumber plantations employing 1,430 workers out of a total of 28,800 workers in the area. The inspections also showed that most of the indigenous population settled along the banks of the Ucayali and Urubamba rivers are employed in logging in inaccessible areas, working for employers ("*madereros*") who pay for their services with food and clothing. Other irregularities were found with regard to working hours, which increased considerably during the harvest season, and with regard to weekly rest and holidays. The Committee also notes that the Government states that it is applying appropriate sanctions for these infractions and monitoring has been made easier by the presence in the area of the labour authorities. While noting the difficulties posed by the payment of wages in kind in cases of forced labour as defined in the Convention, the Committee requests the Government to provide information on the sanctions imposed and the number of infractions reported in this area, in accordance with *Article 25*.

5. The Committee previously noted the comments presented by the National Federation of Miners, Metal Workers and Iron and Steel Workers of Peru (FNTMMSP), concerning dishonest hiring practices known as "*enganche*" on the part of individuals, for the most part in Puno and Cuzco, who recruit for mining enterprises holding licences from the National Directorate of Mines. The contracts offered are usually for 90 days (hence the term "*noventeros*" for these workers) after which the employers are supposed to cover the costs of workers' return journeys; they generally fail to do so, with the result that the workers are unable to return to their place of origin. It was also alleged that wages were too low, working hours too long and medical care non-existent, despite the high risk of contacting diseases such as malaria, tuberculosis, rabies and *uta*; and that work in inhuman conditions was being done by large numbers of minors, according to the report "Minors working in the Madre de Dios washeries" drawn up by the Coordinating Committee of the

Rights of the Child, Inka region. In this regard the Committee notes with interest the information provided by the Government in 1996 on the progress in court proceedings against a group of contractors for violation of personal liberty in the methods used in the coercion and trafficking of minors and violation of freedom of labour. Recalling *Article 25*, the Committee once again asks the Government to provide a copy of the directive drawn up in December 1993 to establish rules regulating the movement of workers to the gold washeries, agricultural plantations, livestock ranches and the like in the areas of Madre de Dios, Kosñipata, Lares and other towns in the area, and to inform the Office of the practical results of applying this directive.

6. The Committee observes that, although certain measures have been taken to eradicate the situations referred to above from the indigenous communities of Atalaya and the gold mines and washeries of Madre de Dios, there are, nonetheless, problems which still call for energetic and sustained action on the part of the authorities. The Committee trusts once again that the Government will take the necessary measures to end the practices whereby many workers, including minors, are subjected to forced labour within the meaning of the Convention.

7. In a direct request in relation to *Article 2, paragraph 2(c)*, concerning compulsory prison labour as a consequence of a conviction in a court of law, the Committee asked the Government to supply information on the measures taken or envisaged to ensure the voluntary nature of work done by prisoners, given that, according to section 65 of the Code for the Execution of Sentences, work is a right and a duty of the prisoner, and that the second chapter on labour does not specify the voluntary character of work done by convicted prisoners. The Committee notes that the Government states in its report that the Constitution expressly states that no one is obliged to work without pay or without his or her freely given consent. Similarly, the Government indicates that the reduction of sentences through work and education, which is provided for in section 65 of the Code for the Execution of Sentences, is a preparatory measure aimed at encouraging prisoners' interest in work and education. Section 67 of the same Code provides that work in prisons must be paid and must facilitate the rehabilitation of the prisoners.

8. The Committee recalls that under the Convention, work may only be exacted from prisoners as a consequence of a conviction in a court of law, which does not prevent persons detained while awaiting trial or sentencing from working on a purely voluntary basis, should they decide to do so. The Committee hopes that the Government will take the necessary measures to establish the voluntary nature of work done by prisoners and that it will supply information in this regard in its next report.

9. As regards section 131(c) of the Regulations under the Code for the Execution of Sentences, under which work for prisoners may be provided by private individuals through the prison administration, the Committee previously noted that the Government was examining the adoption of the necessary measures to give full effect to the Convention and to establish, in express terms in the relevant legal provisions, the need for the consent of the prisoners to do work for private individuals. The Committee requests the Government to provide information on this point.

[The Government is asked to supply full particulars to the Conference at its 87th Session.]

Sierra Leone (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In its comments made for a number of years, the Committee asked the Government to repeal or amend section 8(h) of the Chiefdom Councils Act (Cap. 61) under which compulsory cultivation may be imposed on natives. The Committee previously noted the Government's statement that the above-mentioned section is not in conformity with article 9 of the Constitution and would be held unenforceable. The Committee also noted the Government's indication that section 8(h) was not applied in practice and that information on any amendment of this section would be provided. In its latest report (1995) the Government stated that measures to change section 8(h) are evident in the new proposed Constitution.
>
> The Committee therefore trusts that measures will be taken in the near future in order to bring section 8(h) of the Chiefdom Councils Act into conformity with the Convention and the indicated practice. It asks the Government to provide, in its next report, information on any progress made in this regard.

Singapore (ratification: 1965)

Article 1(1) and Article 2(1) and (2), of the Convention. In previous observations, the Committee referred to the Destitute Persons Act, 1989. Section 13 of the Act puts a work requirement on destitute persons placed in welfare homes under section 3; and section 16 envisages sanctions of imprisonment — involving compulsory work — for leaving a welfare home without permission.

The Committee has again noted the Government's indications that the aim is rehabilitation; there is regular review of cases; the scheme proceeds by encouragement; work includes light jobs and training; competitive wages and conditions of employment apply; and no resident is forced to work. Of 653 residents as of June 1998 (compared with 1,203 two years before), 175 were engaged in the home employment scheme and 18 in the day release work.

The Committee notes with interest the significant drop in numbers of persons subjected to the Act. It hopes the Government will indicate further developments in this respect, but also that it will take appropriate steps in the near future to bring the above-mentioned legislation into line with the Convention.

Spain (ratification: 1932)

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c), of the Convention. With reference to its previous comments, the Committee recalls that it noted that the Prison Regulations (Royal Decree No. 1202/81) did not clearly establish the voluntary character of work by convicts for private enterprises. The Committee notes the additional explanations provided by the Government based on the jurisprudence of the Constitutional Court in this matter. The Constitutional Court has recognized in particular that the right to paid work is a fundamental right of prisoners and has laid down an obligation to provide a sufficient number of workplaces for all prisoners within the prison system. It follows from the Court's jurisprudence that the autonomous body responsible for prison services and labour is facing difficulties in providing work for all prisoners, which has given rise to numerous judgements. The Committee notes this information with interest. It refers to its comments in paragraphs 116 to 125 of the 1998 General Report regarding the conditions imposed by the Convention with regard to work done by prisoners for the benefit of private enterprises, and invites the Government to take the necessary measures to incorporate its practice and jurisprudence into positive law, in particular with regard to the *voluntary* nature of the work done. The Committee also asks the Government to indicate in its next report how in practice prisoners' work for private enterprises is conducted, how prisons are remunerated, by giving examples, and also how they are integrated in the security system. The Government is asked to indicate any further measures taken in this respect.

Sri Lanka (ratification: 1950)

Article 1(1), Article 2(1) and Article 25 of the Convention. 1. The Committee notes with interest the information provided by the Government in response to its previous observation concerning allegations of child labour exploitation, and in particular the amendments to the Penal Code (Act No. 22 of 1995) relating to the sexual exploitation of children. The Committee notes also from the Government's report that, in connection with the fight against child labour, the recruitment of more labour inspectors is under consideration. It would be grateful if the Government would include in its next report details of the manner in which Act No. 22 is applied and the number and extent of penalties imposed in prosecutions which have proceeded under it, as well as extracts from any inspection or other reports — for example, of the Department of Probation and Child-Care Services, the monitoring committee under section 40 of the Children's Charter, and the Women and Children's Bureau of the Police Department and the Department of Labour respectively — on practical difficulties in the application of the Convention in this respect.

2. As requested in the previous observation, the Committee would be grateful if the Government would indicate any measures to protect domestic workers from forced labour and to combat child servitude. It notes that domestic servants are covered by existing legislation.

Article 2(2)(d). 3. The Committee refers again to the state of emergency declared on 20 June 1989 under the Public Security Ordinance, 1947, and the powers of the President under section 10 of the Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 1989. The Government declares that the ongoing war in the country affects all parts, every sector of the economy, national security and the maintenance of essential services. These provisions are thus still in force. The Committee recalls the earlier comments of the Ceylon Workers' Congress and reiterates that recourse to compulsory labour under emergency powers should be limited to circumstances which would endanger the existence or well-being of the whole or part of the population. It notes that the powers are not limited in this way in Sri Lanka and requests the Government to bring its legislation into conformity with the Convention.

Article 2(1) and (2). 4. The Committee recalls the Government's earlier indication that the Compulsory Public Service Act, No. 70 of 1961, sections 3(1), 4(1)(c) and 4(5), imposing on graduates' compulsory public service of up to five years, had led to no prosecutions. It hopes steps will be taken to amend or repeal the Act, in order to comply with the Convention's requirements.

5. The Committee has noted the information provided by the Government in response to its direct request, indicating that no cases of trafficking of children for 1997 have been reported. The Committee also notes that the issue of the right of those serving in the armed forces to leave their employment has been referred to the Ministry of Defence. It hopes the next report will deal further with these matters.

Sudan (ratification: 1957)

1. The Committee notes the Government's report, and the discussion in the Conference Committee in June 1998. In its previous observation, the Committee referred to allegations of the continued existence of slavery and slave-like practices, particularly in the south of the country, where an armed conflict is under way. Based on the information concerning the situation in Sudan submitted by the Special Rapporteur to the United Nations Commission on Human Rights (UN document E/CN.4/1997/58) and communications from the World Confederation of Labour, the Committee had mentioned problems such as abductions and trafficking of women and children, particularly by the Popular Defence Forces. It had noted the forcible abduction of children into rebel armed forces, and that children were forced to transport ammunition and supplies by those forces. The Committee had also noted that a Special Investigation Committee had been established by the Ministry of Justice and that the Government had stated that problems which occurred were related not to slavery as such, but resulted from tribal disputes. The Government had also stated that it was not its responsibility because the areas held by the rebels were outside its control. The Committee noted that there were serious contradictions in the information before it. It recalled the longstanding indications of widespread illegal imposition of forced labour, tolerated or encouraged by the Government. It invited the Government to renew its investigations and to provide detailed information on its findings.

2. The Committee notes that, in the Conference Committee, the Government reaffirmed that it had adopted a serious attitude and was genuine in investigating all allegations of slavery and related practices. The Government also referred to the conclusions of a report by an independent investigator (the "McNair Report"), that Sudanese law was clear in unambiguously criminalizing any slave-like practices, such as kidnapping, abduction, unlawful detention, forced labour and unlawful confinement, and punishing them with imprisonment. The Government stated that it was sparing no effort to take effective measures. It was ready to make progress through the Special Investigation Commission. A National Commission for Human Rights had recently been set up by the Government. The Government also referred to decisive action it had taken over time to release children or other victims, as documented by various organizations. Some situations arose where children or other persons had been taken hostage and later redeemed by the payment of a ransom.

3. The Government also indicated that there had been recent political and constitutional developments. Peace talks held in Nairobi in May 1998 resulted in an agreement of self-determination for southern Sudan, and this has been enshrined in the new Constitution. It was hoped that these developments would bring an end to the protracted civil war which was one of the main reasons for the issue in question. The Government again asked for technical assistance, including training; it was prepared to give information on any future developments and the work of the ongoing Investigation Commission.

4. The Committee notes that the Conference Committee stressed that this was a particularly serious case affecting human rights. It takes due note of the information given to the Conference Committee on measures being taken to track down and bring an end to practices of slavery and notes that that Committee welcomed, in particular, the achievements of the Investigating Commission. However, the Conference Committee expressed its deep concern and urged the Government to ask again for assistance from the Office, to address the substance of the problem, which would ensure that there would be a serious attempt to eliminate slavery throughout the country. The Conference Committee

expressed the hope that the Government would provide details to this Committee on the concrete measures taken, cases brought to justice, number of convictions made and the penalties imposed as well as measures envisaged.

5. The Committee observes that the Government's report does not contain any new information, as requested by the Conference Committee. The Committee further observes that no new information has been received from employers' or workers' organizations or from the UN Commission on Human Rights.

6. The Committee recalls that under *Article 1(1) and Article 2(1) of the Convention* the Government has undertaken to suppress the use of forced or compulsory labour in all its forms, that such labour is work or service for which any person has not offered himself voluntarily, and thus that abduction, kidnapping, trafficking and slavery-like situations must be abolished. The Committee is aware of the difficult situation in the country, including the civil war, and notes the repeated statements of the Government that certain parts of the country are not under its direct control. The Committee recalls however that the application of a ratified Convention is the responsibility of the Government.

7. The Committee asks the Government to provide the full text of the "McNair Report" and to indicate the mandate given, over what period the report was drawn up and under what conditions it has been prepared. The Committee asks the Government to provide the text of the agreement on self-determination and the text of the new Constitution to which it has referred. It notes that the Government has asked for assistance from the Office, to address the substance of the problem, and awaits the outcome of this assistance.

8. The Committee further asks the Government to provide the report of the Special Investigation Commission and to give information on any progress achieved through that Commission; and any report of the National Commission for Human Rights on this question.

9. The Committee asks the Government to provide details of the concrete measures taken, cases brought to justice, numbers of convictions made, penalties imposed (having regard to *Article 25* of the Convention) and remedial measures envisaged.

[The Government is asked to report in detail in 1999.]

Syrian Arab Republic (ratification: 1960)

Article 1(1) and Article 2(1) of the Convention. 1. With regard to the conditions for the resignation of public servants and other state employees, the Committee has since 1985 been drawing the Government's attention to Legislative Decree No. 46 of 23 July 1974, under which a term of imprisonment may be imposed for leaving or interrupting work as a member of the staff of any public administration, establishment or body or any authority of the public or mixed sector before resignation has been formally accepted by the competent authority; or evading obligations to serve the same authorities, whether the obligation derived from a mission, a scholarship or a study leave. Further, the personal goods and property of the person concerned may be confiscated. The Committee previously observed that persons in the service of the State should have the right to leave the service on their own initiative within a reasonable period, either at specified intervals or with previous notice. Persons who have benefited from missions, scholarships or study leave, should also have the right to leave the service on their initiative within a reasonable period proportional to the length of the studies financed by the State or through the reimbursement of the assistance they may have received. The Committee requests that the Government take the necessary measures to ensure that both law and practice are in conformity with the Convention and that persons in the service of the State are free to leave their employment within a reasonable period. It again asks the Government to provide full information on the matter in its next report.

2. The Committee has also since 1987 drawn the Government's attention to Legislative Decree No. 53 of 1962, pursuant to which the resignation of a member of the armed forces who has received a scholarship can only be accepted after ten years of service if the scholarship has lasted longer than one year. The Committee noted a statement by the Government that resignation can be accepted in case of reimbursement only if the person concerned refunds an amount double that of the expenses incurred by the State. The Committee notes from the Government's report that a letter was sent to the Ministry of Defence in 1998, asking for its views. It notes the content of the answer, which provides no new information on the matter. The Committee refers again to paragraphs 33 and 72 of its 1979 General Survey on the abolition of forced labour: career military servicemen who have voluntarily entered into an engagement, should have the right to leave the service in peacetime within a reasonable period, either at specified intervals or with previous notice, subject to the conditions which may normally be required to ensure the continuity of the service; those who have benefited from a scholarship should also have the right to leave the service within a reasonable period that is proportional to the length of the studies financed by the State, or through reimbursement of the actual costs incurred by the State. The Committee hopes that the Government will take the necessary measures to amend its legislation so as to ensure full conformity with the Convention on this point, in law and in practice.

3. In its previous comments, since 1987, the Committee noted that section 597 of the Penal Code provides for sentences of imprisonment involving the obligation to work in cases of vagrancy. In this regard, the Government indicates in its report that the Ministry of Justice answered a letter addressed to them in 1998 by the Ministry of Social Affairs and Labour, stating that a draft Legislative Decree to amend the Penal Code was still under study by the Council of Ministers. The Committee also noted that a copy of the draft has been sent.

The Committee notes that in its report received in June 1998 the Government repeats information already given in previous reports. The Committee recalls that it has considered that provisions on vagrancy are liable to become a means of compulsion to work. It hopes that the Government will take the necessary measures to bring its legislation and practice into conformity with the Convention. It asks the Government to provide information in its next report on any developments in the matter, and that a copy of the Legislative Decree mentioned above be sent as soon as it has been adopted. While noting again the explanations with respect to the archives system of the judicial authorities, the Committee once more requests the Government to provide, with its next report, a sample of recent judgements applying sanctions in application of section 597 of the Penal Code.

Article 2(2)(d) of the Convention. 4. The Committee has been making comments since 1964 on provisions of Decree No. 133 of 1952, respecting compulsory labour, particularly Chapter I (compulsory labour for purposes of health, culture or construction) and sections 27 and 28 (national defence work, social services, road work, etc.) which prescribe forms of compulsory service that go beyond the exceptions authorized by the Convention, such as "any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity ... and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population". The Committee notes the indication in the Government's report received in September 1998 that a Legislative Decree to replace Decree No. 133 of 1952 has been submitted to the competent authority and is still under study. According to the report, the Ministry of Social Affairs and Labour took measures to speed up the promulgation of the Decree, and addressed several letters to the Ministry of the Interior in 1998. The Committee notes the statement that the result of these measures will be communicated as soon as a reply is received from the Ministry of the Interior. The Committee also notes the statement that the provisions of the Decree are not put into practice. With regard to sections 27 and 28 of the Decree concerning national defence work, the Committee notes the indication that letters have been sent to the Ministry of Defence, to ask for information about the draft Civil Defence Decree and to request the follow up of the promulgation with the competent authorities. The Committee also notes that information will be communicated on the reply of the Ministry. The Committee encourages the Government to take the necessary measures to amend Legislative Decree No. 133 of 1952 so as to limit the possibilities of exacting labour to situations of war or emergency or the combating of natural disasters, to repeal sections 27 and 28 and to lay down the necessary sanctions for the illegal exaction of forced or compulsory labour in accordance with *Article 25* of the Convention. The Committee trusts that the Government will take the necessary measures to bring the legislation into conformity with the Convention. It asks the Government to communicate full and detailed information on the matter in its next report.

5. The Committee notes with interest the information in the Government's report, that the Government has established at a Technical Legal Committee presided over by the Minister of Social Affairs and Labour, to study any law in force which is incompatible with the provisions of international labour Conventions. The Committee also notes the Government has established a Committee for Consultation and Tripartite Dialogue, to be presided over by the Deputy Minister and that, amongst other functions, this Committee is to review matters related to the reports which are submitted to the ILO on the application of Conventions and Recommendations, have been set up. The Committee would welcome information about the work and results of the deliberations of these committees and in particular aspects which affect this Convention.

United Republic of Tanzania (ratification: 1962)

1. The Committee notes that the Government's report received in 1997 provides information in reply to certain points in its earlier direct request but not in relation to its observations made over many years. The comments made concerned various aspects of the legislation and practice which have raised questions as to compatibility with the prohibition in *Article 1(1) of the Convention* of forced or compulsory labour, which is in turn defined in *Article 2(1)*, subject to the limited exceptions allowed under *Article 2(2)*. The Committee's observations were last discussed in the Conference Committee in 1992, when the Government representative referred to legislative amendments envisaged; but that Committee expressed its distress at the lack of progress and again urged the Government to take the measures needed.

2. The questions raised have concerned, first, article 25(1) of the 1985 Constitution, concerning the obligation to work, and related provisions in the Local Government (District Authorities) Act, 1982; the Employment Ordinance, 1952; the Human Resources Deployment Act, 1983; the Penal Code; the Resettlement of Offenders Act, 1969; the Ward Development Committees Act, 1969; and the Local Finances Act, 1982: these have in effect provided for compulsory labour by administrative decision and in circumstances which do not appear to fall within the exceptions allowed by the Convention. Secondly, the Committee has asked about the provisions of section 23 of the

National Defence Act, 1966, as to the use of service personnel for non-military purposes (*Article 2(2)(a)*). Thirdly, the Committee enquired as to the protection of children against forced or compulsory labour contrary to the Convention and in particular the results of the deliberations of the Working Group on Child Law. Fourthly, as regards Zanzibar, the Committee referred to the JKU, Decree No. 5 of 1979, which provides for certain kinds of service by young persons in circumstances where compatibility with the Convention is as yet unclear.

3. The Committee notes that various activities relating in particular to the present Convention and other human rights instruments have taken place in the country in cooperation with the ILO Area Office, the multidisciplinary team based in Addis Ababa and the International Labour Standards Department. It hopes that these activities will be intensified with a view to obtaining a satisfactory solution to all these vital concerns of contravention of a basic human rights Convention. It particularly hopes that the Government will supply a report for examination at its next session indicating the progress made on each of the aspects mentioned above.

[The Government is asked to report in detail in 1999.]

Thailand (ratification: 1969)

1. The Committee notes the Government's report. It notes that positive developments have been reported and encourages the Government to continue its efforts to eliminate the problems of child labour and to provide detailed information in its reports on the Convention on further measures taken and practical achievements. The Committee notes with interest that a new Constitution has been adopted in 1997, which provides for the prohibition of forced labour and that the Labour Protection Act of 1998, which came into force in August 1998, prohibits the employment of children under 15 years of age. It would be grateful if the Government would provide information on the following matters, in order to show how the problem of the abolition of forced or compulsory labour has been addressed in conformity with *Articles 1(1) and 2(1) of the Convention*.

I. Child prostitution

2. Further to its previous observation, the Committee notes the information provided by the Government. The Committee further notes that, under the Prevention and Suppression of Prostitution Act of 1996, Committees on Protection and Occupational Development have been established at the central and provincial levels. A specific action plan has been prepared by the Committee at the central level. It notes that a Special Task Force on Commercial Sex Business Prevention and Suppression was set up in May 1998 and also that inspections have been conducted in entertainment premises. The Committee asks the Government to provide detailed information on the application of the Act. It also asks the Government to provide information on the practical actions taken by the Committees for Protection and Vocational Development, at the central as well as the provincial levels and on the action plan prepared by the central committee, and on the results of the inspections conducted in entertainment premises.

3. The Committee notes from the Government's report that regulations related to the Act have been issued and that a ministerial regulation for the setting up of temporary shelters and protection and occupational centres was under consideration by the Council of State. It asks the Government to provide detailed information on the regulations made under the Act and on their practical application.

II. Child labour

4. The Committee notes with interest that the Labour Protection Act of 1998, in section 44, has raised the minimum age of employment to 15 years, in the light of Convention No. 138. It also notes that violation of that provision is sanctioned by imprisonment or a fine or both. The Committee would ask the Government to indicate if these provisions also apply to the informal sector, particularly the agricultural sector, domestic work and self- employed workers, and to give information on the practical application of the Act.

III. Law enforcement

5. *Inspection*. The Committee notes the information provided by the Government on inspections, particularly as regards child labour. It notes from the Government's report that the Ministry of Labour and Social Welfare, through the Department of Labour Protection and Welfare, has focused on small-scale undertakings of fewer than 50 employees, such as garment industries, leatherwear, gem polishing and cutting, ornament making, car repair service stations and restaurants. It further notes that under the Police and Labour Inspection Cooperation Project, started in February 1997, child labour at night, in hidden places or in particular work has been under scrutiny; and that a Child Labour Visit Project has been started in October 1996, whereby parents can find out how their children who have migrated to other parts of the country are living and working. The Committee asks the Government to continue giving detailed information in its next report on the establishments and undertakings inspected, the number of offences found and the number of offenders punished. It also asks it to provide information on the results of inspections carried out in small-scale enterprises by the Department of Labour Protection and Welfare, particularly in garment industries, leatherwear, gem polishing and cutting, ornament making, car repair service stations and restaurants. The Government is also asked to provide information on the inspections carried out under the Police and Labour Inspection Project.

6. *Prosecutions*. Further to its request in the previous observation, the Committee notes the information provided by the Government on the prosecutions carried out in 1997. The Government is asked to continue to provide precise information on prosecutions and sanctions imposed, on the one hand, for illegal employment of children and, on the other hand, for prostitution and similar situations, under the Prevention and Suppression of Prostitution Act of 1996, under the Labour Protection Act of 1998 as well as any criminal law applicable.

IV. Article 25 of the Convention

7. The Committee notes that the Constitution prohibits forced labour in article 51. The Committee also notes from the Government's report that, in a number of cases of protection under the law, fines instead of other sanctions have been imposed on offenders, and that there is a possibility to impose fines in lieu of prosecution in order to settle cases practically and rapidly. The Committee recalls that the Convention requires that the illegal exaction of forced or compulsory labour should be punishable as a penal offence and that the penalties imposed by law should be really adequate and strictly enforced. The Committee would ask the Government to indicate in its next report what measures it has taken to fulfil the requirement of *Article 25* of the Convention. The Committee would also ask the Government to continue to provide detailed information on the prosecutions carried out, their numbers, the number of offenders and the sanctions applied, particularly in

cases of child labour, prostitution and other related activities and other cases of child exploitation.

United Kingdom (ratification: 1931)

The Committee's previous observation, following comments received from the Trades Union Congress, related to the question of prison labour under *Article 1(1) and Article 2(1) and (2)(c) of the Convention*, as well as the question of domestic workers from outside the country. The Committee now notes that the Government's report was received on 16 November 1998, shortly before its session. The Committee has inadequate time to consider the report and has no alternative but to return to the matter at its next session. It consequently requests the Government to provide any more recent information it wishes to bring to the Committee's attention, in good time for its next session.

[The Government is asked to report in detail in 1999.]

Zambia (ratification: 1964)

Article 1(1) and Article 2(1), of the Convention. Further to its previous comments, the Committee notes with satisfaction the Government's confirmation that regulation 41 of the Preservation of Public Security Regulations, under which employees in certain services could be prohibited from leaving their employment, was validly repealed by the Preservation of Public Security (Amendment) (No. 2) Regulations, 1993.

A request on certain other points is being addressed directly to the Government.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Azerbaijan, Bahamas, Bahrain, Belarus, Belize, Benin, Bulgaria, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chile, Côte d'Ivoire, Croatia, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Gabon, Ghana, Guatemala, Guinea, Guinea-Bissau, Iraq, Italy, Jordan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Malaysia, Mali, Mauritania, Mauritius, Morocco, New Zealand, Nicaragua, Niger, Nigeria, Pakistan, Papua New Guinea, Romania, Russian Federation, Saint Lucia, San Marino, Saudi Arabia, Senegal, Seychelles, Slovenia, Solomon Islands, Swaziland, Switzerland, Tajikistan, Togo, Tunisia, Uganda, Ukraine, United Arab Emirates, Uruguay, Yemen, Zambia.*

Information supplied by *Cuba* in answer to a direct request has been noted by the Committee.

Convention No. 30: Hours of Work (Commerce and Offices), 1930

Bolivia (ratification: 1973)

The Committee notes the information provided by the Government in its report on the application of the Convention. It regrets that the General Labour Bill, drawn up with the ILO technical assistance over a period of years, has not been retained by the Government. Consequently, the Committee regrets that no progress has been achieved to bring certain provisions of the General Labour Act of 1942 into conformity with the provisions of the Convention.

In this regard, the Committee draws the Government's attention to the fact that the Committee has for a considerable number of years been referring to section 50 of the above Act which provides that the labour inspectorate may authorize up to two additional hours of work per day under any circumstances, whereas under the provisions of *Article 7 of the Convention* temporary exceptions to the normal working day may only be granted in the event of abnormal pressures of work determined under *paragraph 2(b), (c) and (d)*, and *paragraph 3* of the same Article provides that a maximum number of additional hours of work which may be allowed in the day and in the year must be determined.

The Committee trusts that the Government will not fail to keep the ILO informed of developments in the revision of the General Labour Bill and that it will bring its legislation into conformity with the provisions of the Convention in the near future.

Kuwait (ratification: 1961)

See under Convention No. 1.

Panama (ratification: 1959)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information supplied by the Government in answer to its previous comments. It notes the official establishment, on 21 January 1992, of the Tripartite Committee for Cooperation in Social and Labour Matters, whose functions include harmonizing the Labour Code with the provisions of *Article 7, paragraphs 2 and 3, of the Convention.*
>
> The Committee recalls in this connection that a Bill was drafted during the direct contacts held in November 1977 with a representative of the Director-General of the ILO to set a maximum of 250 hours' overtime per year in commerce and offices, since the possibility of doing three hours' overtime per day and nine per week, without any reasonable annual limit (the 468 hours per year calculated by the Government were deemed excessive) was not considered to be fully in conformity with the above Article of the Convention.
>
> The Committee again expresses the hope that the Government will shortly be in a position to fix an annual limit for temporary exceptions, in the light of the work of the Tripartite Committee and the above comments. It asks the Government to keep the Office informed of any developments in this respect.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Equatorial Guinea, Ghana.*

Convention No. 32: Protection against Accidents (Dockers) (Revised), 1932

Algeria (ratification: 1962)

The Committee notes the Government's reply to its previous comments.

1. Further to its previous comments, the Committee notes the information that the specific text covering ports and docks, based on the general framework for the prevention of occupational risks established by Act No. 88-07 of 26 January 1988, has not yet been

adopted. The Government indicates that this specific text will be adopted only after the Order on Commercial Ports in general, which is currently under examination, is proclaimed. The Committee trusts the Government will take all the necessary measures to adopt, without undue delay, the necessary provisions on the protection of dockworkers against accidents, ensuring the application of the provisions of the Convention, and that a copy of the adopted text will be supplied in the near future.

2. Further to its previous comments, the Committee notes the texts of Executive Decree No. 93-120 of 15 May 1993 on the organization of occupational medicine and Executive Decree No. 96-209 of 5 June 1996 on the composition, organization and functioning of the national council on occupational safety and health. In addition, the Committee notes the Government's statement that it had enclosed copies of provisions concerning safety and health contained in the collective agreement governing employment relations at the port enterprise, ARZEW, and in the internal regulations of the port enterprise of Algiers. As the Office has not received these documents, the Committee would be grateful if the Government would supply copies of these documents with its next report.

3. Further to its previous comments, the Committee notes the information that copies of the "documents 1 and 2" referred to in section 2 of the Inter-Ministerial Order of 5 November 1989 as establishing the supervisory procedure and as attachments to the same Order, have been requested from the Ministry of Transport and will be supplied as soon as they are received.

Argentina (ratification: 1950)

1. In response to the Committee's previous comments, the Government's report refers to the provisions of Act No. 19857 respecting health and safety at work and Regulation No. 351/79, as well as Act No. 24557 respecting danger in the workplace. The Government states that whilst the legislation in force includes general points which refer to access, fencing, gangways, chains, motors and cranes, there are no specific standards concerning activities in ports. Under these circumstances, the Committee would be grateful if the Government would provide a detailed report to enable it to examine, for each of the Articles of the Convention, the information required by the report form, in particular the information concerning the following Articles of the Convention: *Article 8* (the measures of security for hatch coverings and beams used for hatch coverings), *Article 14* (prohibiting the removal of or interference with any fencing, gangway, gear, ladders, etc.) *Article 13, paragraph 2* (the rescue of immersed workers from drowning), and *Article 18* (agreements of reciprocity).

2. The Committee had noted that the Union of Maritime Workers of Argentina had submitted two denunciations (Cases Nos. 1005531 and 1005537, 1995) to the National Department of Health and Safety at Work in respect of accidents which had occurred in the ports of Argentina. The Committee would be grateful if the Government would inform it of the results of the procedures adopted for the organization of the above workers as well as the measures taken to resolve the issues raised. Please also provide general information in respect of the application of the Convention as required under *point V of the report form*.

3. Finally, the Committee wishes to recall to the Government the request formulated by the Governing Body of the member States of the Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32), to examine the proposal to ratify the Occupational Safety and Health (Dock Work) Convention, 1979, (No. 152), whose ratification implies, ipso jure, the immediate denunciation of Convention No. 32

(see document GB.268/8/2, paragraphs 99-101). Please provide information in the next report in respect of the procedures which have been envisaged for the eventual ratification of Convention No. 152.

Italy (ratification: 1933)

Adoption of measures to give effect to the Convention. The Committee recalls that it has been noting for many years that the protection of dockworkers against occupational accidents is governed in the country's various ports by local regulations which do not always ensure observance of the Convention. It also recalls that, despite the terms of section 24(3) of Act No. 84 of 28 January 1994, adopted to reorganize the legislation on ports, requiring the Government to issue, within six months of the entry into force of the Act, regulations containing provisions on occupational safety and health in port work, no such regulations have been issued to date.

The Committee also recalls that under the terms of section 1 of Legislative Decree No. 242 of 19 March 1996 amending Legislative Decree No. 626/94 of 19 September 1994 concerning the improvement of occupational safety and health in all workplaces, the shipping sector is excluded from the scope of Legislative Decree No. 626/94. It had noted however that pursuant to the requirements of this Decree the Minister of Transport and Shipping was shortly to submit a draft text on the subject.

The Committee notes from the Government's report that a Bill has been adopted by the Senate that mandates the Government to issue one or several Decrees — consistent with Legislative Decree No. 626/94 — regarding occupational health in the maritime and dock sector.

The Committee recalls that it has been reminding the Government for over 32 years on the need to adopt a text which ensures the prevention of accidents in all ports. It trusts the Government will not fail to adopt the said Decree or Decrees shortly and to provide copies to the Office as soon as they are adopted.

[The Government is asked to report in detail in 1999.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Chile, China*.

Convention No. 33: Minimum Age (Non-Industrial Employment), 1932

Côte d'Ivoire (ratification: 1960)

With reference to its general observation of 1997, the Committee notes the Government's statement in the report received in August 1998 concerning the Minimum Age (Industry) Convention, 1919 (No. 5), to the effect that children are frequently employed as domestic workers (housemaids), which could lead to abuse and that the authority's attention had been drawn to the need to regulate this sector. The Committee also notes that, according to the report for the Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33), the Government has organized seminars to eradicate the employment of children for domestic work.

The Committee requests the Government to provide more detailed information with regard to any measures taken concerning the employment of children for domestic work.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Burkina Faso, Cameroon, Côte d'Ivoire, Senegal.*

Convention No. 34: Fee-Charging Employment Agencies, 1933

Requests regarding certain points are being addressed directly to the following States: *Bulgaria, Slovakia.*

Convention No. 35: Old-Age Insurance (Industry, etc.), 1933

Argentina (ratification: 1955)

The Committee notes that the Government's report has not been received. It hopes that the Government will not fail to provide a report for examination at its next session containing detailed information in reply to the comments made by the Grouping of Public, State and Private Sector Employees, which were transmitted to it in May 1997 and on 12 October 1998.

Chile (ratification: 1935)

The Committee notes the information provided by the Government in its latest report in reply to its previous comments. It notes in particular that the Government is examining, in accordance with the decision of the Governing Body at its 265th Session (March 1996), the possibility of ratifying Convention No. 128, which will result in the denunciation of Conventions Nos. 35 to 38. For this purpose, it has undertaken technical studies and analyses in order to determine whether Convention No. 128 can be applied, taking into account the current legislation, and particularly the system for the management and financing of pensions adopted in 1980, as well as the differences between Convention No. 128 and Conventions Nos. 35, 36, 37 and 38.

Furthermore, the Committee notes that at its 271st Session (March 1998), the Governing Body set up a committee to examine the representation made under article 24 of the Constitution by the College of Teachers of Chile A.G. alleging non-observance by Chile of Conventions Nos. 35 and 37. Moreover, at its most recent session (273rd, November 1998), the Governing Body declared receivable the representation made under article 24 of the Constitution by a number of national trade unions of workers of private sector pension funds concerning the system for the private administration of pensions and alleging non-observance by Chile of Conventions Nos. 35, 36, 37 and 38.

In accordance with its usual practice, the Committee has decided to suspend its examination of the application of these Conventions while awaiting the decisions of the Governing Body.

The Committee also notes the observations received on 20 October 1998 from the Unitary Occupational Front of Pensioners and Survivors of Chile (Region V) alleging that the adjustment of the pensions provided under the former system of the redistribution of pensions is not sufficient taking into account the international standards ratified by Chile. These observations were transmitted to the Government on 11 November 1998. The Committee has decided to postpone its examination of this question until its next session so that it can examine these observations in the light of any additional information that the Government may be able to provide in this respect.

France (ratification: 1939)

Article 12, paragraph 3, of the Convention. The Committee notes with interest that section 42 of Act No. 98-349 of 11 May 1998 respecting the entry and residence of foreigners in France and the right of asylum has provided for the insertion in the Social Security Code of section L.816-1 by virtue of which Chapter I of Book Eight of the Social Security Code, establishing in particular the supplementary allowance of the National Solidarity Fund (FNS), is applicable to persons of foreign nationality who are in possession of a resident's permit or other documents justifying their lawful residence in France, *notwithstanding any provision to the contrary*. The Committee also notes that, according to the information provided by the Government, section 42 of the above Act repeals any condition of nationality for the granting of non-contributory benefits (benefits for disabled adults, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis. Consequently, the Committee is given to understand that section L.815-5 of the Social Security Code, under which supplementary benefits are only due to foreigners on condition of the conclusion of reciprocal international agreements, has been repealed. The Committee would be grateful if the Government would confirm in its next report whether this is the case and, should this not be the case, to provide information on the manner in which section L.815-5 of the Social Security Code would continue to be applied.

Moreover, the Committee would be grateful if the Government would provide a detailed list of the residents' permits or documents which justify the lawful residence in France of foreign nationals referred to under section L.816-1 of the Social Security Code.

Peru (ratification: 1945)

The Committee notes the Government's report. The Committee also notes the discussion on the application of this Convention held in June 1996 by the Conference Committee. With reference to the comments that it is making on the application of Convention No. 102, the Committee would be grateful if the Government would address the following questions in its next report.

1. *Article 4 of the Convention. Guarantee of an old-age pension once the accumulated capital is exhausted.* The Government reiterates in its report that the retirement programme is only one of the four retirement options available to an insured person under a pension fund administration. Resolution No. 232-98-EF/SAFP also establishes that the "programmed retirement" method can be revoked. Insured persons have the possibility at any time of changing to another method of retirement pensions. The Committee notes the above and recalls that when a worker opts for the "programmed retirement" method, she or he loses any right to an old-age pension when the accumulated capital is exhausted. The Committee is bound to express its concern at the situation of persons who opt for the "programmed retirement" pension method and do not exercise their right to change to another method. In this respect, the Convention requires that all insured persons, including those who have opted for the "programmed retirement" method, are guaranteed an old-age pension throughout the duration of the contingency. The Committee hopes that the Government will be able to provide information on the progress achieved in the near future to ensure the full application of the Convention with regard to the "programmed retirement" method.

2. *Article 9, paragraph 1. Financial contribution of employers to the resources of the insurance scheme.* In its previous comments, the Committee had requested information on the measures which have been adopted or are envisaged to supplement Legislative Decree No. 25897 of 27 November 1992 to ensure that employers contribute to the financial resources of the insurance scheme for wage-earners. The Government states in its report that sections 29 and 31 of Presidential Decree No. 054-97-EF permit dependent workers and self-employed workers, as well as employers, to make voluntary contributions. These employers' contributions are not subject to a ceiling. The Committee considers it useful to recall that *Article 9, paragraph 3*, of the Convention includes a flexibility clause with a view to taking into account the situation of certain national insurance schemes which provide *compulsory* coverage of the whole of the active population. Since the coverage of persons who are not employees by the private pension system is only optional, employers should be obliged to contribute to the financial resources for the compulsory insurance scheme, in accordance with *Article 9, paragraph 1*, of the Convention. The Committee is therefore bound to urge the Government to take the necessary measures to ensure that employers also contribute to the financial resources of the pension insurance scheme, in accordance with this provision of the Convention.

3. *Article 9, paragraph 4. Financial participation by the public authorities.* The Committee once again notes the Government's statement to the effect that, in accordance with the provisions of the Single Codified Text of the Act respecting the private pension fund administration system, adopted under the above Presidential Decree No. 054-97-EF, the State contributes to the financial resources for insured persons by issuing vouchers. These vouchers are issued by the Insurance Standards Office to an amount corresponding to the benefits of workers in relation to the months of their contributions to the national pension system. The Government adds that the contribution of the public authorities to the financial resources or the benefits of insurance schemes would involve a cost that the Peruvian economy does not have the capacity to bear at present. The Committee once again notes that the above vouchers represent the recognition of the rights acquired under the national pension system by insured persons who opt to be insured under the private pension system, but that they do not appear to fully constitute a contribution by the public authorities to the financial resources or to the benefits of insurance schemes, within the meaning of this provision of the Convention. Although aware of the difficulties to which the Government refers, the Committee is bound once again to hope that the necessary effort will be made to adopt measures which give full effect to this provision of the Convention.

4. *Article 10, paragraph 1. Administration of the insurance scheme.* The Government once again states that the public authorities, through the Superintendence of Private Pension Fund Administrations (SAFP), constantly evaluates pension funds with a view to preventing any risk that may be involved in private management by a limited liability company. According to the Government, the requirement to be a limited liability company to constitute a pension fund administration responds simply and exclusively to questions of an operational nature, but not related to profit. The Committee points out that, in accordance with section 14 of Presidential Decree No. 054-97-EF, before pension fund administrations initiate operations in the public sphere, they have to have shares representing their assets registered in the stock market. In this respect, the above provision of the Convention requires that the institutions which administer insurance schemes *shall not be conducted with a view to profit*, which is not in conformity with the nature of limited liability companies registered on the stock market, as is the case of pension fund administrations. The Committee therefore once again requests the Government to indicate in its next report the manner in which it ensures that pension fund administrations are not

conducted with a view to profit, as required by this provision of the Convention. Please also indicate whether occupational organizations have formed pension fund administrations or participated in their share capital, and provide information on their operations.

5. *Article 10, paragraph 4. Participation by insured persons in the management of insurance institutions*. (a) The Government reiterates that the participation by the representatives of insured persons in the management of insurance institutions currently finds expression in their freedom to be insured under a specific pension fund administration. The basic principle of the freedom to participate is observed through the opportunity available to insured persons to maintain or transfer their insurance funds to a pension fund administration which appears most suitable to them and with which they feel best represented. The Government adds that this will not prevent standards from being issued in the near future, allowing greater participation by insured persons or their representatives in the administration of pension fund administrations. The Committee recalls that the freedom to choose a pension fund administration is not sufficient to comply with the requirement of the participation of insured persons in the administration of insurance institutions, as required by this provision of the Convention. It would therefore be grateful if the Government would adopt the necessary measures to give effect to this provision of the Convention in the framework of the private pension system and if it would provide copies of the new provisions adopted in this respect.

(b) The Committee requests the Government to indicate the manner in which the representatives of the persons protected participate in the management of the pension system administered by the Insurance Standards Office (ONP), and in particular if they are represented on the ONP's internal bodies.

6. Finally, the Committee recalls that in March 1996 the Governing Body invited States parties to Convention No. 35 to examine the possibility of ratifying the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), which will automatically result in the denunciation of Convention No. 35. The Committee would be grateful if the Government would provide information in its next report on the consultations held with the social partners and the decision that is made in this respect.

Convention No. 36: Old-Age Insurance (Agriculture), 1933

Chile (ratification: 1935)

See under Convention No. 35.

France (ratification: 1939)

See under Convention No. 35.

Peru (ratification: 1960)

See under Convention No. 35.

Convention No. 37: Invalidity Insurance (Industry, etc.), 1933

Chile (ratification: 1935)

See under Convention No. 35.

Djibouti (ratification: 1978)

The Committee notes that the Government's report has not been received. It must therefore repeat is previous observation which read as follows:

> The Committee notes from the Government's report that there have been no changes in the application of the Convention. The Committee recalls that for many years it has been requesting the Government to take steps to amend its legislation so as to provide for invalidity insurance. It again expresses its hope that, with the technical assistance of the International Labour Office, the Government will endeavour to establish an invalidity insurance scheme in accordance with the provisions of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

France (ratification: 1939)

See under Convention No. 35.

Peru (ratification: 1945)

With reference to its previous comments, the Committee notes the Government's report, in which it repeats the information provided in its report on the application of Convention No. 35. In these circumstances, the Committee refers to its observation on Convention No. 35, in relation to the following provisions of Convention No. 37.

1. *Article 10, paragraph 1, of the Convention. Contribution of employers to the financial resources of the insurance scheme.* See under Convention No. 35, Article 9, paragraph 1.

2. *Article 10, paragraph 4. Financial participation by the public authorities.* See under Convention No. 35, Article 9, paragraph 4.

3. *Article 11, paragraph 1. Administration of the insurance scheme.* See under Convention No. 35, Article 10, paragraph 1.

4. *Article 11, paragraph 4. Participation by insured persons in the management of insurance institutions.* See under Convention No. 35, Article 10, paragraph 4.

5. The Committee once again notes that persons who opt exclusively for the "programmed retirement" method lose any entitlement to a pension when the capital accumulated in their individual account is exhausted. It therefore urges the Government to take measures to guarantee that all insured persons, and particularly those who have opted for the "programmed retirement" method (and do not exercise their right to change to another method), are provided with the survivors' benefit envisaged in the Convention during the whole period of the contingency.

6. The Committee notes the provisions of Presidential Decree No. 054-97-EF respecting the administration of the invalidity and survivors' branches by pension fund administrations and insurance companies and would be grateful if the Government would include in its next report information on the application of these provisions in practice, and particularly concerning the single premium which must be paid by insured persons to the insurance company under section 52 of Presidential Decree No. 054-97-EF.

7. Finally, the Committee recalls that in March 1996 the Governing Body invited States parties to Convention No. 37 to examine the possibility of ratifying the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), which will automatically result in the denunciation of Convention No. 37. The Committee would be grateful if the Government would provide information in its next report on the consultations held with the social partners and the decision made in this respect.

Convention No. 38: Invalidity Insurance (Agriculture), 1933

Chile (ratification: 1935)

See under Convention No. 35.

Djibouti (ratification: 1978)

See under Convention No. 37.

France (ratification: 1939)

See under Convention No. 35.

Peru (ratification: 1960)

See under Convention No. 37.

Convention No. 39: Survivors' Insurance (Industry, etc.), 1933

Peru (ratification: 1945)

With reference to its previous comments, the Committee notes the Government's report, in which it repeats the information provided in its report on the application of Convention No. 35. In these circumstances, the Committee refers to its observation on Convention No. 35, in relation to the following provisions of Convention No. 39.

1. *Article 12, paragraph 1, of the Convention. Contribution of employers to the financial resources of the insurance scheme.* See under Convention No. 35, Article 9, paragraph 1.

2. *Article 12, paragraph 4. Financial participation by the public authorities.* See under Convention No. 35, Article 9, paragraph 4.

3. *Article 13, paragraph 1. Administration of the insurance scheme.* See under Convention No. 35, Article 10, paragraph 1.

4. *Article 13, paragraph 4. Participation by insured persons in the management of insurance institutions.* See under Convention No. 35, Article 10, paragraph 4.

5. The Committee once again notes that persons who opt exclusively for the "programmed retirement" method lose any entitlement to a pension when the capital accumulated in their individual account is exhausted. It therefore urges the Government to take measures to guarantee that all insured persons, and particularly those who have opted for the "programmed retirement" method (and do not exercise their right to change to another method), are provided with the survivors' benefit envisaged in the Convention during the whole period of the contingency.

6. The Committee notes the provisions of Presidential Decree No. 054-97-EF respecting the administration of the invalidity and survivors' branches by pension fund administrations and insurance companies and would be grateful if the Government would include in its next report information on the application of these provisions in practice, and particularly concerning the single premium which must be paid by insured persons to the insurance company under section 52 of Presidential Decree No. 054-97-EF.

7. Finally, the Committee recalls that in March 1996 the Governing Body invited States parties to Convention No. 39 to examine the possibility of ratifying the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), which will automatically

result in the denunciation of Convention No. 39. The Committee would be grateful if the Government would provide information in its next report on the consultations held with the social partners and the decision made in this respect.

Convention No. 40: Survivors' Insurance (Agriculture), 1933

Peru (ratification: 1960)

See under Convention No. 39.

Convention No. 42: Workmen's Compensation (Occupational Diseases) (Revised), 1934

New Zealand (ratification: 1938)

The Committee notes with satisfaction that, pursuant to the policy direction issued on 20 July 1998 by the Minister for Accident Rehabilitation and Compensation Insurance (ARCI), the operational guidelines for the consideration of claims for work-related diseases (under article 7 of the ARCI Act of 1992) have been amended to incorporate the schedule of occupational diseases appended to this Convention and a presumption that, unless there is specific evidence to the contrary, claims to which the schedule relates should be processed as occupational in origin.

Convention No. 44: Unemployment Provision, 1934

New Zealand (ratification: 1938)

The Committee notes the detailed information and the legislation provided by the Government in its report for the period 1 July 1995 to 1 July 1998. It also notes the comments by the New Zealand Employers' Federation (NZEF) and by the New Zealand Council of Trade Unions (NZCTU), as well as the Government's reply to the latter comments.

The NZCTU expresses its concern that the Government's report does not refer to significant and far-reaching changes in the payment of benefits to the involuntary unemployed introduced by the Social Security Amendment Act No. 5, which was passed under urgency by Parliament in May 1998, and by the supporting legislation — the Social Security (Work-Test) Amendment Bill, which was still before Parliament with the Government's proposal to have it implemented by 1 October 1998. According to the NZCTU, this legislation would in particular compel beneficiaries to participate in "organized activities" and to sign a jobseeker contract obliging them to be available for and actively seek work, and introduces a new system of sanctions to reinforce the message that unless a beneficiary works, he will not be entitled to a benefit. As a consequence of these changes, much of the Government's report will no longer be accurate by 1 October 1998. Therefore, the NZCTU requests the Government to provide to the Committee copies of all legislation relating to changes and information on their likely impact on compliance with the Convention.

In reply, the Government indicates that the comments made by the NZCTU relate to policies that were not implemented during the reporting period ending 31 May 1998 and that the Government will provide a more detailed response to the concerns expressed by the NZCTU in its next report. In the meantime, the Government draws attention in particular to the fact that the requirement to undertake organized activities is not new and will in many ways be similar to the current Community Task Force scheme; not all beneficiaries will be engaged in such activities as part of the proposed community wage scheme; it will not be a requirement that beneficiaries work in order to receive the benefit, rather they have to be available to participate if requested. In general terms, the aim of the new legislation referred to is to create a more consistent framework to better deliver the Government's employment strategy.

The NZEF states, with respect to the Government's report, that it is pleased to support the position taken by the Government.

The Committee proposes to address the issues raised by the NZCTU once the Government has provided in its next report, in accordance with the assurances given, detailed information on the incidence of the changes in unemployment benefit on the application of the corresponding Articles of the Convention and has supplied copies of the new legislation mentioned above after it has entered into force.

[The Government is requested to report in detail in 1999.]

Peru (ratification: 1962)

In reply to the Committee's previous comments, the Government refers once again to the compensation received by workers in the event of unwarranted dismissal (Legislative Decree No. 728, approved by Presidential Decree No. 003-97-TR). The Government recalls that *Article 1 of the Convention* permits a choice between the payment of a benefit, an allowance or a combination of benefit and an allowance, and it has opted for a benefit. Furthermore, this Article defines a benefit as a payment related to contributions paid in respect of the beneficiary's employment whether under a compulsory or a voluntary scheme. The Government adds that, since the law in Peru envisages the payment of a benefit for unwarranted dismissal, it is therefore compulsory. Consequently, the Government considers that the indemnity provided for unwarranted dismissal gives effect to the Convention. Furthermore, it refers once again to the compensation provided related to the length of service (Presidential Decree No. 001-97-TR) which constitutes an additional measure for the financial protection of workers whose employment relationship is ended involuntarily.

The Committee notes this information. It is bound to remind the Government that the benefit for unwarranted dismissal cannot constitute a system of protection against unemployment in accordance with the requirements set out by this Convention. States which have ratified the Convention have to guarantee a benefit to any worker who is involuntarily unemployed, and not only to those who have been subject to unwarranted dismissal. Moreover, the compensation related to length of service provided to certain workers at the end of their employment relationship, irrespective of the reason for which the relationship is terminated, cannot be assimilated to an unemployment benefit system, in accordance with the provisions of the Convention.

The Committee places particular emphasis on the need to establish a system of protection against unemployment, in accordance with the provisions of the Convention, in view of the comments received from the World Confederation of Trade Unions (WCTU) reporting the policy of massive reduction of personnel by the company "Telefónica del Péru S.A." following the sale of its shares by the Government.

The Committee trusts that the Government will re-examine this question in the light of the above comments and requests it to indicate in its next report the measures which have been taken or are envisaged to give effect to this Convention, which was ratified by the Government of Peru over 35 years ago.

[The Government is asked to report in detail in 2000.]

* * *

In addition, a request regarding certain points is being addressed directly to the *Netherlands*.

Convention No. 45: Underground Work (Women), 1935

Guinea-Bissau (ratification: 1977)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> In previous observations, the Committee noted that Act No. 2/86 of 5 April 1986 enacting the Labour Code repealed previous legislation which barred the employment of women on underground work but its section 155 provided that supplementary legislation will establish the circumstances or banning of their employment on such work as well as on other work liable to prejudice women's genetic function.
>
> The Committee notes that according to the Government's previous report, no progress has yet been achieved in harmonizing legislation with the Convention. It hopes that the necessary measures will be taken by the Government, in accordance with its obligations arising from ratification of the Convention. It requests the Government to communicate information on any new measure in this respect.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

South Africa (ratification: 1936)

The Committee notes the Government's statement in its report that it has initiated the process of denouncing Convention No. 45 in order to ratify the Safety and Health in Mines Convention, 1995 (No. 176).

The Committee also notes the indication in the Government's report that the Minerals Act No. 50 of 1991, of which section 32(2) prohibited females from working underground in a mine, was repealed, with effect from 15 January 1997, by item 8 of schedule 3 to the Mine Health and Safety Act No. 29 of 1996. However, according to the terms of the latter Act, the text of which was attached to the report, item 8 of schedule 3 to the new Act repeals not the whole of the Minerals Act No. 50 of 1991 but only its sections 26 to 27. The Committee requests the Government to indicate the current position of legislative provisions concerning the application of the Convention, including clarification on the text which repealed section 32(2) of the Minerals Act.

The Committee requests the Government to supply information on the application of the Convention in practice, including data on women workers, if any, assigned to underground work in mines, their numbers, types of work performed and conditions of work. It also asks the Government to supply the substance of the observations made by SACCOLA (South African Employers' Consultation Committee on Labour Affairs) and the Chamber of Mines, mentioned in its previous report.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Brazil, Croatia, Dominican Republic, Greece, Haiti, Hungary, Italy, Malta, Mexico, Spain, Ukraine, Viet Nam, Zimbabwe*.

Information supplied by *Slovakia* in answer to a direct request has been noted by the Committee.

Convention No. 47: Forty-Hour Week, 1935

Requests regarding certain points are being addressed directly to the following States: *Finland, New Zealand*.

Convention No. 48: Maintenance of Migrants' Pension Rights, 1935

Croatia (ratification: 1991)

With reference to its previous observation the Committee has examined the questions raised by the Association of Clubs of Military Retirees of the Union of Retirees of Croatia, in its communications received in April and August 1997, with regard to the application of Conventions Nos. 48 and 102, together with the Government's written reply received in November 1997 as well as oral explanations given by its representative in the Conference Committee in June 1998. It has also taken note of the comments of the said Association, dated 17 October 1998, on the Government's latest report on the application of Convention No. 48. The Association alleges incomplete implementation by Croatia of the obligations it assumed in 1991 to take over the payment of pensions due to army pensioners of the former Federal Army (JNA) with continuous residence in Croatia. The Committee considers that the issues raised by the Association do not fall under the provisions of Convention No. 48, which is aimed at establishing a scheme for the maintenance of rights between Members of the International Labour Organization which are bound by the Convention. The Committee also refers to its observation concerning Convention No. 102.

Convention No. 52: Holidays with Pay, 1936

Central African Republic (ratification: 1964)

The Committee notes that the Government's report does not contain any answer to its earlier comments. It must therefore repeat its previous observation, which read as follows:

> For several years the Committee has observed that section 129, second paragraph, of the Labour Code provides that the length of service entitling workers to holiday can be of up to 24 or 30 months in the case of an individual contract or a collective agreement. It has further noted that in 1980 and 1988 a draft Decree was drawn up with the assistance of the ILO, providing for the amendment of section 129 of the Code so that persons covered by the Convention may benefit from a minimum holiday with pay every year. It has also noted that at the Conference Committee in 1992, the Government indicated that it started the process to amend the Labour Code to comply with the requirements of the Convention. The Committee notes that in its latest report the Government indicates that in its opinion the national

legislation is not incompatible with the Convention. The Committee recalls that *Article 2 of the Convention* sets forth the right to annual holiday with pay of at least six working days after one year of continuous service. The Committee hopes that the Government will soon provide information on the measures adopted to ensure full compliance with the Convention.

Myanmar (ratification: 1954)

The Committee takes note of the Government's report for the period ending on 31 August 1998. The Government indicates once again that the Factories Act (1951), the Shops and Establishments Act (1951) and the Leave and Holidays Act (1951) have been revised and redrafted taking into consideration the Committee's comments and that the revised texts are among the labour Bills that are to undergo final review by the Laws Scrutiny Central Body. The Committee hopes that these texts will be adopted in the very near future and that the Government will provide the Office with copies.

With reference to its previous comments, the Committee wishes to draw the Government's attention to the fact that the texts adopted should ensure the application of the Convention to all the undertakings set forth in *Article 1 of the Convention*, particularly small establishments, shops and offices, as well as building, public works and road transport undertakings. Lastly, the Committee hopes that the texts adopted will give effect to the provisions of the Convention in respect of the following points on which the Committee has commented for many years:

Article 2, paragraph 2. Every person under 16 years of age should be entitled to an annual holiday with pay of at least 12 working days after one year of continuous service, whereas under section 4(1) of the Leave and Holidays Act workers between 15 and 16 years are only allowed ten days.

Article 4. Any agreement to forego or relinquish the right to the minimum annual holiday with pay laid down in the Convention (six working days or, in the case of persons under 16 years of age, 12 working days) must be void, whereas section 4(3) of the same Act allows agreements permitting the accumulation of earned leave.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Libyan Arab Jamahiriya.*

Convention No. 53: Officers' Competency Certificates, 1936

Mauritania (ratification: 1963)

Article 3 of the Convention. The Committee notes the provisions of the new Merchant Shipping Code (Act No. 95-009 of 31 January 1995) and in particular sections 275 and 276 under which the conditions for obtaining licences, diplomas, certificates and permission to perform the duties of master or skipper, first officer, first chief engineer or officer are determined by order of the Ministry responsible for Merchant Shipping. The Committee also notes the Government's statement in its report to the effect that the Decrees should be adopted. The Committee recalls that similar provisions exist in the former Merchant Shipping Code (sections 80 and 81 of Act No. 78-043) and that the Government had indicated on various occasions in its previous reports that the conditions under which certificates of officers' competency are issued should be stipulated by Decree. Nevertheless, the Committee notes that the above Decrees have never been adopted and trusts that the legislation to give effect to this Article of the Convention will shortly be promulgated and that the Government will provide information in respect of any progress made in this regard.

Spain (ratification: 1971)

Article 3 of the Convention. The Committee notes with interest that in accordance with *paragraph 1 of this Article*, the adoption of Act No. 27/1992 concerning ports and the merchant navy considers as grave infractions those set forth relating to maritime safety, namely the hiring of or the granting of the functions of master, skipper or navigating officer in charge of the watch at sea, to persons who are insufficiently qualified to carry out these functions or who are exercising these functions without the necessary certificate of competency (section 116(2)(e)).

In its previous comments, the Committee referred to the procedure which enables the use of uncertified replacement officers. The Committee also recalls that *Article 2, paragraph 3,* provides that exceptions to the provisions of *Article 3, paragraph 1,* may be made only in cases of *force majeure*. The Committee requests the Government to indicate whether the notion of lack of "sufficient" certification signifies that the use of uncertified replacement officers is possible and continuing in practice and, if so, to indicate the measures adopted or envisaged to limit the replacement of officers to cases of *force majeure*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Djibouti, Estonia, Liberia, Libyan Arab Jamahiriya, Luxembourg, Panama*.

Convention No. 55: Shipowners' Liability (Sick and Injured Seamen), 1936

Liberia (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1, paragraph 2, of the Convention.* In reply to the Committee's previous comments, the Government refers to the provisions of section 51 of the Maritime Law concerning vessels which can be registered under Liberian law. In this regard, the Committee wishes to draw the Government's attention to the fact that its comments concerned section 290-2 of the law, which provides that persons employed on vessels of less than 75 net tons are not covered by the provisions of Chapter 10 of the law relating specifically to the obligations of the shipowner in the event of seafarers' sickness or accident.
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> *Article 2, paragraph 1.* The Committee noted that section 336-1 of the Maritime Law provides for payment of the wages, maintenance and medical care of the seaman in cases of sickness or accident while he is off the vessel provided that he is "off the vessel pursuant to an actual mission assigned to him by, or by the authority of, the master". The Committee recalls that under this provision of the Convention the shipowner is liable in all cases of sickness and injury occurring between the date specified in the articles of agreement for reporting for duty and the termination of the engagement.
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> *Article 6, paragraph 2.* The Committee noted that, contrary to this provision of the Convention, the approval of the competent authority is not required when a sick or injured seaman has to be repatriated to a port other than the port at which he was engaged, or the port at which the journey commenced, or a port in his own country or the country to which he

belongs. Under section 342-1(b) of the Maritime Law, agreement between the seafarer and the master or shipowner suffices. The Government states that if there is agreement between the parties, administrative authorization is not necessary but that, in the event of disagreement, the parties may submit the matter to the Commissioner of Maritime Affairs by virtue of section 359 of the law. The Committee notes this information. It wishes to draw the Government's attention to the need to include provisions in its legislation making it compulsory to seek the approval of the competent authority when the parties agree to a port of repatriation other than those laid down in *Article 6, paragraph 2(a),(b) or (c)* of the Convention. In fact, the provisions of this Article of the Convention are designed to protect a sick or injured seafarer by preventing the master or the shipowner imposing on him a port of repatriation other than the port at which he was engaged, the home port of the vessel or a port in his own country or the country to which he belongs, without the approval of the competent authority; in the event of disagreement between the parties, an appeal to a conciliation authority is not sufficient in itself.

The Committee hopes that in the near future the Government will adopt the necessary measures to ensure full conformity of its legislation with the provisions of the Convention.

Panama (ratification: 1971)

1. With reference to its previous comments, the Committee notes the adoption of Legislative Decree No. 8 of 26 February 1998 issuing regulations governing work at sea and on waterways. It notes with satisfaction that the legislation sets out a number of obligations at the expense of the shipowner, including the obligation to provide board and lodging in the event of the sickness of the seafarer, in accordance with *Article 3(b) of the Convention*, as well as the obligation to safeguard property left on board by sick, injured or deceased persons, in accordance with *Article 8* of the Convention.

2. The Committee would nevertheless like to draw the Government's attention to the following points.

Article 1. The Committee notes that, under the terms of section 1(b), the Legislative Decree of 1998 on work at sea and on waterways does not apply to the provision of services which, due to the nature of the operations of the vessel, do not require the permanent presence of the worker on board, in such a manner that the worker is not regularly and habitually away from his residence for a long period and does not have a different workplace which is far from his residence. The Committee would be grateful if the Government would provide additional information on workers who in practice may be covered by this exclusion.

Article 2. (a) The Committee notes that, under the terms of section 84 of the Legislative Decree of 1998 on work at sea and on waterways, the shipowner is under an obligation to cover the risks of sickness, resulting from any disease, occurring between the date specified in the articles of agreement for the commencement of service and the date of termination of the engagement. It notes that this section is contained in Title II of Chapter 7, which covers "occupational risks in the event of sickness". In these conditions and in order to avoid any ambiguity, the Committee considers it desirable to modify the heading of Title II to refer in a general manner to "risks of sickness". The Committee would be grateful if the Government would indicate in its next report any progress achieved in this respect.

(b) Furthermore, the Committee notes that the Legislative Decree on work at sea and on waterways does not contain a provision governing the obligations of the shipowner in the event of employment injuries, except for sections 80 to 83, which define employment injury and entrust the maritime authority with the approval of a schedule for the minimum compensation for such injury. In these conditions, the Committee would be grateful if the Government would indicate the manner in which effect is given to the provisions of the Convention relating to employment injuries suffered by seafarers, and more particularly the obligations set out in *Articles 3, 4 and 5* of the Convention (see also under Article 7 below).

Article 5. (a) The Committee recalls that, under this provision of the Convention, where the sickness or injury results in the incapacity of the seafarer for work, the shipowner has to pay full wages as long as the sick or injured person remains on board and, if the seafarer has dependants, to pay wages in whole or in part until he has been cured or the sickness or incapacity has been declared to be of a permanent character (subject to the provisions of *Article 5, paragraph 2)*. In this respect, it notes that section 89 of the Legislative Decree on work at sea and on waterways establishes, in the event of the sickness of the seafarer resulting in incapacity for work, the obligation of the shipowner to pay full wages as long as the seafarer remains on board, and if he is landed until he has been cured, or the incapacity has been declared to be of a permanent character or until the *termination of the articles of agreement*. The Committee is bound to draw the Government's attention to the fact that this last restriction is not authorized by this provision of the Convention.

(b) The Committee also notes that, although section 89(2) of the above Legislative Decree limits the obligation of the shipowner to pay the wages of a seafarer who is landed in the event of sickness which results in incapacity for work to a period of 12 months from the beginning of the sickness, this period is reduced to 30 days for vessels engaged in the international transport of passengers. The Committee recalls in this respect that, under the terms of *paragraph 2* of this Article of the Convention, the limitation of the responsibility of the shipowner for the payment of wages in whole or in part to a person who is landed cannot be limited to a period of less than 16 weeks from the day of the injury or the commencement of the sickness.

In these conditions, the Committee requests the Government to indicate the measures which have been taken or are envisaged to give full effect to *Article 5* of the Convention on the two above points.

Article 7, paragraph 1. The Committee notes with interest that, in accordance with section 90 of the Legislative Decree on work at sea and on waterways, the shipowner must defray the burial expenses in the case of death of the seafarer occurring on shore if, at the time of death, the sick seafarer was receiving assistance at the expense of the shipowner in respect of a sickness. The Committee would be grateful if the Government would indicate the provisions under which, in accordance with this provision of the Convention, the shipowner must also defray the burial expenses, on the one hand, in case of death occurring *on board*, irrespective of the cause and, on the other hand, in the case of death on shore as a result of an employment injury.

Article 9. Under the terms of section 92 of the Legislative Decree on work at sea and on waterways, disputes relating to the obligations of the shipowner deriving from Chapter 7 must be resolved in a rapid and inexpensive manner through an accelerated procedure or a similar procedure before the maritime labour tribunals of Panama, to the exclusion of any other tribunal, unless agreed otherwise in writing between the shipowner and the seafarer in the articles of engagement. The Committee requests the Government to provide information on the application of this provision in practice, and particularly on the rules governing the relevant procedures. It would be grateful if the Government would indicate the rules which are applicable to the resolution of disputes in cases where neither the shipowner nor the seafarer is resident in Panama, with an indication of the measures which have been taken to ensure the implementation of any arbitration award or judicial decision finding that the shipowner's obligations have been violated.

3. The Committee requests the Government to provide general information in its next report, in accordance with *point V of the report form*, on the manner in which the Convention is applied in practice, including in so far as possible statistical information.

* * *

In addition, a request regarding certain points is being addressed directly to *Djibouti*.

Convention No. 56: Sickness Insurance (Sea), 1936

Panama (ratification: 1971)

1. The Government indicates in its report that the Social Security Fund is revising resolution No. 1348-82 J.D. of 1983 which regulates the inclusion of seafarers in the social security scheme, in the light of the Committee's comments. The Government also indicates that the draft revision of this resolution will be adopted by the Board of the Social Security Fund after going through the internal procedure.

The Committee takes note of this information. It notes with interest that, according to the draft provided by the Government, all foreign workers and their dependants resident in the Republic of Panama and employed on a Panamanian vessel assigned to international service will in future belong to the compulsory social security scheme, in accordance with *Article 1 of the Convention*.

2. The Committee in its previous comments also drew the Government's attention to the fact that entitlement to social security benefits, and in particular sickness benefits, was conditional on the payment of contributions by the employer, which is contrary to the Convention. The benefits provided for by the Convention may be withheld only in the circumstances described in *Article 2, paragraph 4, and Article 3, paragraph 3*, of the Convention, which make no reference to the possibility of non-payment of contributions by the employer. The Government in its reply indicates that the Committee's comments will be taken into account when the regulations in question are revised.

Under these circumstances, the Committee trusts that the draft revision of resolution No. 1348-83 J.D. of 1983 will be adopted in the very near future so as to ensure full application of the Convention in respect of points (1) and (2) referred to above. The Committee requests the Government to indicate any progress made in this regard and to provide a copy of the text revising resolution No. 1348-83 J.D. of 1983 as soon as it has been adopted.

Peru (ratification: 1962)

The Committee notes certain information provided by the Government on the application in practice of the Convention. It also notes the adoption in 1997 of the Social Security Modernization Act (No. 26790), which repeals Legislative Decree No. 22482 on which the Committee had commented previously. The Committee notes that, according to the Government's information, the new legislation provides for the involvement of the private sector in health care. The social health insurance system is now complemented by health plans and programmes provided by Health Care Providers (EPS). These may be public or private companies or institutions distinct from the Peruvian Institute of Social Security (IPSS) and their sole purpose is to provide health care, using their own or third-party facilities, under the supervision of the EPS supervisory body.

The Committee notes that Act No. 26790 introduces fundamental changes into the health care system. Furthermore, it is the Committee's understanding that the new legislation also applies to persons employed on Peruvian ships. The Committee therefore requests the Government to provide detailed information, in accordance with the report form, on the effect of the new legislation and national practice on the application of each of the Articles of the Convention and in particular *Article 1* (scope), *Article 4* (payment to the seafarer's family of the sickness cash benefits to which he would have been entitled had he not been abroad), *Article 6* (funeral expenses) and *Article 7* (continuation of insurance benefit after the termination of engagement).

The Government is also requested to consider the Committee's comments concerning Convention No. 24.

* * *

In addition, a request regarding certain points is being addressed directly to *Croatia*.

Convention No. 58: Minimum Age (Sea) (Revised), 1936

Liberia (ratification: 1960)

The Committee notes with regret that once again the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> Further to its previous comments, the Committee notes with interest that section 326(1) of the Maritime Law has been amended to require 15 years as the minimum age for employment or work on Liberian vessels, registered in accordance with section 51 of the Maritime Law (Title 22 of the Liberian Code of Laws). It further notes that such minimum age is required irrespective of any other provision of Title 22, including section 290(2)(a) which would otherwise have limited the application of Chapter 10 and section 326 (on minimum age) to persons employed on vessels of not less than 75 net tons. It notes however that section 326(3) permits persons under the age of 15, to occasionally take part in the activities on board such vessels under specified conditions. The Committee would be grateful if the Government would indicate how such special employment is limited to children of not less than 14 years of age, taking into account all the conditions specified by *Article 2, paragraph 2, of the Convention*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Grenada, Guatemala, Lebanon, Panama, Yemen*.

Convention No. 59: Minimum Age (Industry) (Revised), 1937

Bangladesh (ratification: 1972)

Further to the previous observation, the Committee notes the Government's report, which includes information on the continued efforts to eliminate child labour from the garment factories of the members of the Bangladesh Garment Manufacturers and Exporters Association (BGMEA). According to the report, among the 3,984 garment factories visited by the inspection, 3,381 were found without child labour, 275 had child labour, and 328 factories were temporarily closed.

The Government further states that a Memorandum of Understanding was signed in 1994 between the Ministry of Labour and Employment and the ILO to launch the International Programme on the Elimination of Child Labour (IPEC) with a view to eliminating child labour in different sectors.

In addition to the above, the Committee notes the reports the Government submitted in 1997 to the United Nations concerning the Convention on the Rights of the Child (CRC/C/3/Add.38 and CRC/C/3/Add.49), in which the Government notes that, although estimates vary, the number of child workers is significant in literally hundreds of occupations, and that in some cases children are subject to severe exploitation and physical and psychological hazards. The Government further recognizes the need for action to remove children urgently from hazardous and unhealthy work and to reduce child labour progressively by expanding primary schooling and providing support to poor families (CRC/C/3/Add.49, paragraph 37).

The Committee requests the Government to indicate all measures taken, in line with the indications in the above-mentioned reports, to ensure the application of the Convention in practice, as well as the results achieved, including the number of children effectively removed from the work done in contravention to the minimum age provisions. It requests the Government to continue to supply detailed information in accordance with *point V of the report form* on the application of the Convention in practice, including for instance any statistics, extracts from official reports, the number of inspection visits made, the contraventions reported, with regard not only to the garment manufacturing but also other sectors covered by the Convention.

Pakistan (ratification: 1955)

The Committee takes note of the information supplied in the Government's report in reply to its previous observation.

Fixing of minimum age

The Committee has been commenting on the fact that the Mines Act, 1923, and the Factories Act, 1934, established the minimum age of *15 years* for access to employment in mines and for dangerous or unhealthy occupations, respectively, in accordance with *Article 7, paragraph 4(a) and (b), of the Convention*, while the Employment of Children Act, 1991, in section 2(iii), defines "child" as a person who has not completed his 14th year of age, and prohibits the employment or work in the prescribed occupations or processes for children (i.e. under the age of *14 years*).

In reply, the Government indicates that, by virtue of section 19 of the Employment of Children Act, 1991, the provisions of this Act and the rules made thereunder are applied *in addition to* and *not in derogation of*, the provisions of the Mines Act, 1923, and the Factories Act, 1934. The Committee notes, however, that section 19 of the 1991 Act stipulates at the same time that the definition of "child" contained in the Factories Act, 1934, and the Mines Act, 1923, should be deemed to be amended in accordance with the definition in section 2 mentioned above.

The Committee notes that the Government is of the opinion that the 1991 Act which raises the penalties to be imposed for contravention has become an effective tool in combating child labour in Pakistan. Nonetheless, the Committee cannot but observe that the Employment of Children Act, 1991, does not meet the requirements under *Article 7, paragraph 4, of the Convention* and the change of the definition of "child" from under 15 years to under 14 years signified a retrogression from the minimum age earlier prescribed under the Factories Act, 1934, and the Mines Act, 1923.

The Committee therefore requests the Government to supply information on measures taken to ensure that such efforts towards enforcement is based on the prohibition of employment or work of children under the age of *15 years* and not 14 years as regards mines, quarries and other works for the extraction of minerals from the earth, or in other dangerous or unhealthy occupations, in accordance with *Article 7, paragraph 4,* of the Convention.

As to the Government's reference to the certification requirements under section 26A of the Mines Act, 1923, the Committee points out that this issue of certificates of "fitness" for particular work of the persons who have attained the minimum age is covered by *Article 7, paragraph 5,* of the Convention, and not *paragraph 4.* However, the Committee agrees that it is difficult to enforce minimum age provisions where the child's age is not duly certified by such means as adequate birth records or registers. It requests the Government to indicate any measures taken or envisaged in this regard, as one of the means to ensure the application of the Convention in practice.

Practical application

The Committee notes that, according to the Government's report, primary education has been made compulsory in two provinces of Punjab and NWFP, which covers about 70 per cent of Pakistan's population. It also notes that the action programmes launched under the IPEC (International Programme on the Elimination of Child Labour) for the elimination of child labour and rehabilitation of working children are contributing towards informal education and simultaneously combating child labour. The Committee notes the Government's declaration of its enthusiasm to eradicate child labour by the promotion of education, and strongly encourages the Government to pursue this direction. It hopes that information on such efforts and the results attained will continue to be included in the report.

The Committee further notes the information contained in the report concerning various measures taken to ensure the application of the Convention in practice, some of them with the assistance of IPEC, including the setting up of a National Steering Committee to monitor and advise on the nature and scope of the activities and to review the action programmes under IPEC, and a Permanent Advisory Committee in the Ministry of Labour to oversee and monitor the implementation of the action plan formulated by the Ministerial Task Force on Child Labour. It asks the Government to state whether this task force is related to the Tripartite Task Force on Labour which the Committee noted from the Government's previous report, and to provide information on the activities of both bodies, to the extent that they relate to the application of the Convention, and in particular any recommendations made by the Tripartite Task Force on Labour concerning the new labour policy and especially the minimum age for employment.

As to the Government's reference to the initiatives in sports goods manufacturing and in particular football stitching, the Committee hopes that care is taken so that the efforts to eliminate child labour from a specific sector should not result in chasing children into other sectors and forms of employment, which are less visible and more difficult to control.

The Committee notes that the figures concerning implementation provided in the report (21,111 inspections made; 9,488 prosecutions; 2,272 convictions or cases decided; and penalties imposed of Rs.1,624,719) are cumulative of the period between 1995-98. It requests the Government to supply information which would show the development over the years, and also the number of under-age children removed from work or employment. The Committee also notes from the Government's report received in September 1997 on

Convention No. 29 that the result of the child labour survey conducted under the authority and supervision of the ILO estimated the magnitude of child labour in Pakistan was 3.3 million. It asks the Government to supply as much statistical information as possible on the number of children working in the sectors covered by the Convention and its evolution.

Noting the Government's statement to the effect that there are no visible instances of forced labour in mines and factories, the Committee would draw the Government's attention to the fact that the Convention covers not only big factories in the formal sector but also small ones in the informal sector, in particular as to the occupations scheduled as dangerous or unhealthy by the competent authority under *Article 7(4)(b)*. It requests the Government to continue to supply information regarding the application of the Convention in practice with regard to employment or work by children under the ages stipulated (in *Article 7*, in the case of Pakistan) in industrial undertakings as defined under *Article 1*.

Sierra Leone (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> In its previous comments, the Committee noted the draft Employment Act prepared with the ILO's assistance which prescribes the age of 16 years for admission to employments likely to jeopardize the life, health or morals of young persons, so as to give effect to *Article 5 of the Convention*. The draft Act also provides that "the employer shall keep a register of all children under the age of 18 years employed by him and of the dates of their birth", in accordance with *Article 4* of the Convention. The Committee notes that the draft Act has not yet been enacted. Therefore, it expresses the hope again that the new Act will be adopted in the very near future in order to ensure complete conformity of the national legislation with the Convention on these points and that the Government will soon be able to communicate the text of the new Employment Act.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Turkey (ratification: 1993)

With reference to the previous observation, the Committee notes the reports of the Government, as well as comments made by the Confederation of Turkish Trade Unions (TÜRK-IŞ), and by the Confederation of Turkish Employers' Associations (TISK) received with them.

The Committee notes with interest that Turkey has ratified Convention No. 138 on 30 October 1998, which will come into force on 30 October 1999 and *ipso jure* entail the denunciation of this Convention then, as the minimum age of 15 years was specified under *Article 2(1)* of that Convention. The following observation and the direct request that the Committee is also making are based on the provisions of Convention No. 59 which remain in force until 30 October 1999.

General measures for application

The Committee notes the information on continued activities in cooperation with IPEC (the International Programme on the Elimination of Child Labour). It notes in particular that the Ministry of Labour and Social Security will continue to coordinate the activities of all the institutions working on child labour, and that the action programmes include those aimed at enhancing the capacity of the Child Labour Unit, and improving awareness of the labour inspectors about child labour. The Committee also notes with interest that both TÜRK-IŞ and TISK have formed child labour sections in their respective organizations entrusted primarily with research and awareness promotion duties.

The Committee, however, notes the Government's indication in the report received in November 1998 that the priority was given to activities for improvement of conditions of work for children. It draws the Government's attention to the fact that any measures to improve working conditions should be taken only as temporary measures pending the removal of under-age children from work. The exception would be the cases of young persons who have attained the general minimum age working on dangerous work in violation of the higher minimum age for dangerous work, in which case the removal of the danger or hazardous conditions may justify the persons continuing to work.

Application of the Convention in practice

The Government indicates that, according to a study conducted by the State Statistics Institute, the rate of those working between the ages 12 and 14 fell from 16.1 per cent in 1994 to 13.5 per cent in 1996, which the Government considers as a sign of the effectiveness of actions taken. The Committee further notes that the duration of elementary education has been extended from five years to eight years by Act No. 4306 of 16 August 1997.

TÜRK-IŞ is of the view that the application of the Convention in practice is inadequate due to the insufficiency of the inspection, and points out that there are only 415 inspectors for the whole country. The Committee notes the Government's statement in the report that in 1996, 27,554 inspections were carried out on the health and safety of workers, and 3,767 cases concerning child labour were reported, although most were non-lucrative activities in family undertakings.

The Committee notes that TISK considers that the Convention is well applied in its member enterprises, and that child labour exists in the informal sector and small enterprises. Recalling that the Convention covers the undertakings in the sectors enumerated in *Article 1 of the Convention*, irrespective of their size or legal setting, subject only to the exceptions allowed under the Convention for family undertakings and training schools, the Committee requests the Government to refer to the direct request it is making on *Article 2(1)* regarding establishments of tradesmen and artisans.

The Government confirms the TISK's view by stating that breaches are found rather in small enterprises with less than ten workers, and adds that the employers are punished according to the provisions on infringements. The Committee requests the Government to continue to supply information on the practical application of the Convention in particular in small undertakings and in the informal sector and measures taken to ensure the application. Please include for instance, extracts from the reports of the inspection services, school enrolment and attendance rate, and information concerning the number and nature of the contraventions reported, sanctions imposed, in accordance with *point V of the report form*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *China, Ghana, Guatemala, Lebanon, New Zealand, Nigeria, Swaziland, United Republic of Tanzania, Turkey, Yemen.*

Convention No. 60: Minimum Age (Non-Industrial Employment) (Revised), 1937

Paraguay (ratification: 1966)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> The Committee notes the new Labour Code (Act No. 213, promulgated on 29 October 1993), as well as the Minor's Code (Act No. 903 of 18 December 1981).
>
> The Committee notes that the minimum age of 15 years under section 119 of the new Labour Code applies only to the industrial undertakings, while the old provision of this section as amended by Act No. 506 of 1974 used to cover any public or private undertaking. There is no other provision in the new Labour Code or the Minor's Code fixing the minimum age for admission of children to non-industrial undertakings apart from the provision of section 6 of the Minor's Code which prohibits work of children under 12 years old outside their home. The Committee requests the Government to indicate how effect is given to *Article 2 of the Convention* which requires the general prohibition of employment of children under 15 years of age in non-industrial work.
>
> A direct request concerning other points is also being addressed to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, a request regarding certain points is being addressed directly to *Paraguay*.

Convention No. 62: Safety Provisions (Building), 1937

Algeria (ratification: 1962)

The Committee notes the Government's report and the reply to its previous comments. It also notes the information on the adoption of and the texts of Order No. 96-11 of 10 June 1996 amending and supplementing Law No. 90-03 of 6 February 1990 on Labour Inspection, as well as Executive Decree No. 96-209 of 5 June 1996 providing for the composition and functioning of the national occupational safety and health council.

1. With respect to the comments it has been making for a number of years, the Committee notes the information that due to priority being given to the enactment of basic laws as a result of the reforms introduced in the country, the draft regulations intended to give effect to the provisions of the Convention have been delayed. It further notes the statement that special attention was given by the public authorities to all matters touching on the maintenance of safety and health of workers, in particular in high-risk sectors of economic activity such as building and public works. The Government cites the establishment of the national occupational safety and health council as proof of this governmental interest, and states that it will not fail to communicate to the Office the promulgated texts of the regulations, which it indicates should not be further delayed.

The Committee recalls the long period that has elapsed for the adoption of special regulations concerning safety in the building industry, as required by the Convention. Given the acknowledged high-risk nature of work in the building industry, the Committee trusts the Government will take the necessary measures to ensure that the long-awaited regulations will come into force in the very near future and that a copy will be supplied to the Office.

2. *Article 6 of the Convention.* Further to its previous comments, the Committee notes that the partial statistics of occupational accidents in the building and public works sector of the central region of the country for the year 1994, indicated in the Government's report as enclosed, have not reached the Office. The Committee hopes that the said statistics for 1994, as well as more recent statistics covering the building industry in the whole country, will be provided by the Government, as required by this Article of the Convention.

Central African Republic (ratification: 1964)

The Committee notes the information supplied by the Government in its report. It notes in particular the information that the Government has taken due note of the comments of the Committee and that the necessary measures will be taken within the overall revision of the legislative and regulatory texts on labour envisaged by the Department of Labour and that the technical assistance of the ILO's multidisciplinary advisory team for Central Africa will be requested. The Committee trusts this overall revision will be accomplished soon and that the Government will not fail to address the Committee's previous comments as set out below.

Introduction into national legislation of the standards set forth in ratified Conventions

In its previous comments, the Committee drew the Government's attention to the need to adopt measures in laws and regulations to give effect to the provisions contained in the Convention even if, as stated by the Government, under the Constitution of 4 January 1995, international agreements, treaties and conventions that are duly ratified by the Republic have the force of national law.

The Committee recalls that the incorporation into national legislation of the provisions of ratified Conventions, from the mere fact of their ratification, is not sufficient to give effect to them at the national level in all cases in which the provisions are not *self-executing*, that is where they require special measures for their application, which is the case, at least, for Part I of the Convention. Furthermore, special measures are also needed to establish penalties for non-observance of the standards set forth in the instrument, which is the case of *Article 3(c) of the Convention*.

The Committee once again draws the Government's attention to *Article 1, paragraph 1*, of the Convention, in accordance with which each Member which ratifies the Convention undertakes to maintain in force of laws or regulations which ensure the application of the General Rules set forth in Parts II to IV of the Convention. In this respect, the Committee recalls that draft texts were prepared following the direct contacts which took place in 1978 and 1980 with the responsible government services. The Committee is bound to express the firm hope that the relevant texts will be adopted in the very near future.

Statistics of accidents (Article 6 of the Convention)

For a number of years, the Committee has been noting the absence, in the Government's reports, of statistical information relating to the number and classification of accidents occurring in the building sector. In its last report, the Government states that the Labour Department does not currently have at its disposal reliable statistics in this field.

The Committee recalls that, under this Article of the Convention, each Member which ratifies the Convention undertakes to communicate the latest statistical information indicating the number and classification of accidents in an enterprise or sector. The Committee once again hopes that the Government will soon be in a position to indicate the measures which have been taken to give effect to the Convention on this point and to supply the appropriate statistical information.

[The Government is asked to report in detail in 1999.]

France (ratification: 1950)

1. The Committee notes with interest the information contained in the Government's report and the various texts of law and decrees that have come into force concerning safety and health in the building and public works sector. In particular it notes Law No. 93-1418 of 31 December 1993 amending the provisions of the Labour Code applicable to the building and civil engineering sector as regards safety and health at work. This Law has been completed by four Decrees, No. 94-1159 of 26 December 1994 (on the integration of safety and the organization of coordination of safety and health in the building and civil engineering sectors), Decree No. 95-543 of 4 May 1995 (on inter-enterprise organs for safety, health and conditions of work), No. 95-607 of 6 May 1995 (establishing the list of regulations to be observed by independent workers and employers carrying out their own work on building or civil engineering worksites), and No. 95-608 of 6 May 1995 (amending the Labour Code and various regulatory texts with a view to making them applicable to independent workers and to employers who carry out their own work on building and civil engineering worksites).

The Committee notes the Government's statement that Decree No. 94-1159 of 26 December 1994 will help apply the provisions of the Convention, in particular those concerning scaffolds, hoisting appliances, and other works and first-aid appliances. In addition the Committee notes with interest the Government's statement that the new provisions give a new impetus to protection in this sector by the improvement resulting from the measures for collective protection provided for therein, through the coordination entrusted to a specialist coordinator. It also notes with interest the statement that Decree No. 95-607 of 6 May 1995, which extends coverage of safety and health provisions to independent workers and employers executing their own building works, has permitted to combat attempts at avoiding the application of safety and health regulations by using independent workers and employers constructing their own works.

2. With regard to its previous comments concerning the comments made by the French Democratic Confederation of Labour (CFDT), the Committee notes the information contained in the Government's report on the measures taken to bring to the attention of all persons concerned, including independent workers and employers carrying out their own construction work, and from the first day of work, the pertinent legislation, as required by *Article 3(a) of the Convention*. The Committee would be grateful if the Government would ensure that such measures are also taken with respect to temporary workers that the CFDT, in its earlier comments had estimated, in the absence of statistics on temporary workers, to be about 80,000 in the sector.

Article 4 and point V of the report form. Further to its previous observation based on the earlier comments of the CFDT, the Committee notes the information provided by the Government, including the statistics of occupational accidents for 1993, as well as the activity report of the Organization for Accident Prevention in the Building and Public Works Industry (OPPBTP) for 1995. It requests the Government to continue to supply information on the practical application of the Convention in its next report.

Netherlands (ratification: 1950)

1. The Committee notes with interest the Government's reply to its previous comments concerning points raised by the Netherlands Trade Union Confederation, communicated by the Government in 1992. It also notes with interest the amendments and expansion of regulations on the building industry, in connection with the implementation of European Directives of 1989 and 1992. In particular, it notes the adoption of the amendment (Decree No. 440 of June 1994) to the Working Conditions Act, and the Building Process Decree No. 597 of 11 August 1994. Under the amended Act, employers are obliged to draw up a document identifying and assessing the risks associated with their company's activities, with a view to taking measures for the protection of their employees. The measures are then to be laid down in an action plan and carried out in order of priority. When carrying out the first risk identification and assessment, employees must call in a certified safety, health and welfare service. The Government indicates that since 1 January 1996 all employers in the building industry have been obliged to be in possession of a written risk identification and assessment document that has been approved by a certified safety, health and welfare service.

The Committee notes from the Government's report that the Building Process Decree aims at improving the health of employees working on temporary and mobile building sites. One of the Decree's main features is that its provisions provide for the responsibilities of all parties in the building process, notably employers, principals, designers and the self-employed, depending on their role and position in the process. The Government's report indicates that this extended division of responsibility has integrated safety, health and welfare policy into the entire building process, leading to a chain of responsibility, which links all the parties involved, without detracting from the responsibility of employers, in particular, in this area.

2. *Lifting equipment. Articles 4 and 12, paragraph 1, of the Convention.* Further to its previous comments, the Committee notes the information that as of 1 May 1994 various inspectorates at the Ministry of Social Affairs and Employment — including the Labour Inspectorate — were amalgamated to form one inspection service (I-SZW). The Government indicates that, not only is this consistent with the "one window" idea, but that it renders the supervision and enforcement of regulations more effective and efficient. The Government therefore believes that the inspection capacity of the current I-SZW is adequate for a sector like the building industry.

Article 13, paragraph 1. Further to its previous comments, the Committee notes the information that employers are obliged to observe the statutory regulations in ensuring that every crane driver or hoisting appliance operator is properly qualified. The Government indicates that employers must engage an internal or external expert to assess whether everything is in order.

3. *Scaffolding. Article 7, paragraph 8.* Further to its previous comments, the Committee notes the information that, with respect to the construction, use and supervision of scaffolding, the Government believes there are sufficient statutory provisions which comply with the provisions of the Convention. It considers that the legally prescribed instruments such as compulsory risk identification, use of expert safety, health and welfare services (as of 1 January 1996) and the drawing up of a health and safety plan for larger building sites, provide an adequate basis for employers to meet their obligations. It further indicates that employers and employees remain responsible for the practical implementation of the requirements to ensure that working conditions at building sites are good.

Article 3(a). Further to its previous comments, the Committee notes the information that the legal provisions concerning information and training for employees have been expanded for larger building sites with the entry into force of the Building Process Decree pursuant to the Working Conditions Act. The Government states that section 5, subsection 1(g), of the Decree requires the health and safety plan to state how cooperation and consultation at the site between employers and employees is to be put into practice and how employees will be provided with information and training

Article 4 and point V of the report form. Further to its previous comments, the Committee notes the statistics of inspection made by the I-SZW for the years 1991 to 1996. The Committee requests the Government to continue to supply information on the practical application of the Convention in its next report.

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In addition, requests regarding certain points are being addressed directly to the following States: *Democratic Republic of the Congo, Guinea.*

Convention No. 64: Contracts of Employment (Indigenous Workers), 1939

A request regarding certain points is being addressed directly to *Guatemala*.

Convention No. 68: Food and Catering (Ships' Crews), 1946

Argentina (ratification: 1956)

The Committee notes that the Government's report does not reply to its previous comments. The Committee is therefore bound to reiterate its previous comments, which read as follows:

> The Committee notes the information supplied by the Government in its report and, in particular, the indication that the reforms in the shipping sector are in no way inconsistent with the provisions of the Convention. It requests the Government to provide additional information on this matter, in the light of the comments that the Committee has been making for several years concerning the application of *Article 5* (laws and regulations concerning food supply and catering arrangements), *Article 6* (system of inspection), *Article 9, paragraph 3* (inspection reports), *Article 10* (annual report) and *Article 12* (information collected and recommendations issued by the competent authorities), *of the Convention*. Please send the Office the text of the Regulations on Navigation at Sea and on Inland Waterways (REGINAVE), as amended.

The Committee hopes that the Government will make every effort not to postpone further the provision of information on the above matters.

Panama (ratification: 1971)

For many years the Committee has been commenting on the application of the provisions of the Convention, with particular reference to *Article 2(a)* and *Article 5, paragraph 2(a)*. It noted previously the information provided by the Government concerning a draft amendment to the maritime legislation and, in its general observation of 1997 concerning Panama, noted that the draft text had on several occasions been the subject of comments by the Committee of Experts and that its conformity with the maritime Conventions ratified by Panama had given rise to discussions in the Conference Committee on the Application of Standards.

The Committee notes the adoption of Legislative Decree No. 8 of 26 February 1998 issuing regulations respecting maritime labour at sea and on waterways. It also notes Legislative Decree No. 7 of 10 February 1998 establishing the Maritime Authority of Panama, unifying various maritime functions of the public administration and adopting other provisions.

With regard to the application of the provisions of this Convention, the Committee notes that Chapter V (sections 59 to 67) of Legislative Decree No. 8 covers accommodation and food.

However, the Committee notes, with regard to *Articles 2(a) and 5, paragraph 2(a)* above, as it noted with regard to the draft text examined previously, that section 61 of Legislative Decree No. 8 requires the provision of food to comply with the standards determined by the internal rules of the vessel. The Committee recalls that, by virtue of *Article 2(a) of the Convention*, the competent authority shall discharge the functions (except in so far as they are discharged in virtue of collective agreements) of the framing and enforcement of regulations concerning food and water supplies and catering. In accordance with *Article 5, paragraphs 1 and 2(a)*, the laws or regulations concerning food supply and catering arrangements shall be maintained in force and shall require the provision of food and water supplies which are suitable in respect of quantity, nutritive value, quality and variety.

The Committee also notes that, by virtue of section 62 of Legislative Decree No. 8, standards for an inspection system, including for food and water supplies, shall be established by the Maritime Authority of Panama. The Committee notes in this respect that, in accordance with sections 12 and 33 of Legislative Decree No. 7, the Maritime Authority of Panama (which is an autonomous public body) includes a General Directorate of Seafarers, the functions of which include carrying out inspections concerning working, living and accommodation, conditions of ships' crews with a view to ensuring the strict application of the laws and international conventions ratified in relation to work at sea and on waterways, as well as preparing a written report for the authorities indicating the anomalies or violations reported and recommending the imposition of the penalties.

Taking into account its previous comments and the fact that the new texts which have been adopted do not contain the specific provisions required for the application of *Articles 2(a) and 5, paragraph 2(a)* of the Convention, which has the effect of impeding or even preventing supervision of the food supply and catering arrangements on ships by the inspection services; and taking into account the fact that the above Legislative Decrees specifically repeal a number of provisions, but also provide for the tacit repeal of provisions which are contrary to them (section 143 of Legislative Decree No. 8 and 41 of Legislative Decree No. 7); and in order to permit it to make an overall assessment of the application of the Convention following the adoption of these two Legislative Decrees, the Committee requests the Government to report in detail on the application in law and practice of each of the provisions of the Convention and on the measures which have been adopted or are envisaged to give effect to the Convention.

[The Government is asked to report in detail in 1999.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Italy, New Zealand, Norway, Peru, Portugal.*

Convention No. 69: Certification of Ships' Cooks, 1946

Requests regarding certain points are being addressed directly to the following States: *Algeria, Croatia, Djibouti, Indonesia, Luxembourg, Panama, Russian Federation.*

Convention No. 71: Seafarers' Pensions, 1946

Peru (ratification: 1962)

The Committee notes the communication dated April 1998 submitted by the Union of Crew Members of Maritime Vessels for the Protection of Workers which again refers to the situation of the pensioners of the Peruvian Steamship Company (a limited liability company under liquidation). The Committee notes the Government's response in which it states that, following various judicial and extrajudicial procedures, the decision handed down by the courts shall be enforced subject to the financial means available to the Board of Liquidators of the Peruvian Steamship Company. Under these circumstances, the Committee refers to its observation of 1997 and hopes that the Government will provide a detailed report by 1999 containing the information required by the report form in respect of *Articles 2, 3 and 4 of the Convention* as well as practical information in respect of their application (*point V of the report form*), including the manner in which pensions are paid to the former pensioners of the Peruvian Steamship Company (a limited liability company under liquidation).

[The Government is asked to report in detail in 1999.]

* * *

In addition, a request regarding certain points is being addressed directly to *Greece*.

Convention No. 73: Medical Examination (Seafarers), 1946

Egypt (ratification: 1982)

For a number of years the Committee has been commenting on the implementation of the requirement under *Article 5, paragraph 1, of the Convention* that the validity of the medical certificate shall not exceed two years.

The Committee notes that while the Government's report continues to state that the practice is to renew the medical certificate every two years, despite the Committee's repeated comments, no legislative or regulatory text has been provided to confirm that this is a legal obligation. Moreover, the specimen document sent by the Government states that it is the seafarers' medical certificate issued according to ILO Convention No. 73, although no supporting text has been provided.

The Committee again requests the Government to bring its legislation into conformity with the Convention and its stated practice, and trusts that the Government will forward the text of the decree concerning the maximum validity of the seafarers' medical certificate.

[The Government is asked to report in detail in 2000.]

Finland (ratification: 1956)

The Committee notes with interest the information in the Government's report, in particular Decision No. 1250/1997 of the Ministry of Social Affairs and Health concerning the certification of medical doctors as seamen's physicians. It notes that this text is intended to ensure that physicians performing medical examinations of seafarers will take part in special training and continuing education for seaman's physicians, and that the Finnish Navigation Administration may grant a licensed physician the right to act as a seaman's physician.

The Committee considers more generally that the training and recognition of the seaman's physician as a practitioner with specialized training is a significant step toward ensuring that the medical examination to determine physical aptitude for sea service is performed by physicians who possess the requisite medical and technical skills. The Committee further recalls that this examination entails not only evaluating the seafarer's aptitude to perform a particular job at sea, but also to determine that the specific conditions of service at sea will not be likely to aggravate any pre-existing conditions, which might in addition result in the seafarer's incapacity during his service at sea, ultimately affecting the safety of life on board ship and the health of other persons on board.

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In addition, requests regarding certain points are being addressed directly to the following States: *Djibouti, Luxembourg, Russian Federation.*

Convention No. 74: Certification of Able Seamen, 1946

Requests regarding certain points are being addressed directly to the following States: *Croatia, Ghana, Guinea-Bissau.*

Convention No. 77: Medical Examination of Young Persons (Industry), 1946

Bolivia (ratification: 1973)

1. For more than 20 years, the Committee has been drawing the Government's attention to the absence of any laws or regulations giving effect to *Articles 2, 3, 4, 5 and 7 of the Convention*. The Committee has noted on several occasions the Government's intention of adopting general regulations to implement the Act on Occupational Safety and Health and Welfare, which would to some extent give effect to the provisions of the Convention.

In its report of 1994, the Government reported on specific activities for organizing the operation of medical services in enterprises with the ultimate aim of drawing up a pilot plan for a medical control service. It was envisaged that the plan in question would contribute to providing information and data needed for the implementation of the Regulations on Medical Services in Enterprises which had already been elaborated. According to the Government, the plan was to have gone into operation in the early part of 1995, after consultations with employers' and workers' organizations, and would have given effect to the Committee's comments.

2. The Committee notes the information provided by the Government in its latest report to the effect that, in the absence of suitable structures in the ministry concerned, measures to apply the Convention have not been taken and that, consequently, the Labour Code with its implementing regulations still applies. The Committee also notes with concern that the Government indicates that documentary evidence of fitness for employment, as required under *Article 3* of the Convention, does not correspond to standard practice in the country. The Committee recalls once again that neither the provisions of the Labour Code nor existing practice ensure compliance with the Convention. It also notes once again the Government's intention to consider the possibility of making regulations giving effect to all the provisions of the Convention.

3. The Committee is bound to recall that, when a government in exercise of its sovereign right decides to ratify a Convention, it undertakes to adopt any legislation or regulations that might be necessary to give effect to the provisions of the Convention in question. In the case in point, the Government must, in accordance with the provisions of *Article 2* of the Convention, take the necessary measures to issue, through its competent authority, documents certifying fitness for employment for children and young persons aged below 18 years. The document in question should be issued following a medical fitness examination, which is to certify that the young person is in good health but also that he or she is fit for the work in question.

4. The Committee recalls that it previously suggested that the Government might wish to call upon the Office for technical assistance in order to solve the technical problems which the application of this Convention appears to have posed for a number of years. The Committee urges the Government to take the necessary measures as soon as possible to adopt legislation or regulations ensuring full application of the Convention, and trusts that the Government will provide information on any progress in this regard in its next report.

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In addition, a request regarding certain points is being addressed directly to *El Salvador*.

Convention No. 78: Medical Examination of Young Persons (Non-Industrial Occupations), 1946

A request regarding certain points is being addressed directly to *El Salvador*.

Convention No. 79: Night Work of Young Persons (Non-Industrial Occupations), 1946

A request regarding certain points is being addressed directly to *Lithuania*.

Convention No. 81: Labour Inspection, 1947 [and Protocol, 1995]

Algeria (ratification: 1962)

The Committee notes with satisfaction the Government's reports containing information in reply to its earlier comments and the abundant documentation provided with these reports.

1. The Committee notes that the annual inspection reports are published in the form required under the terms of *Article 20 of the Convention* and contain the elements referred to in *Article 21* of the said Convention and detailed in accordance with the guidelines given in Part IV of the Labour Inspection Recommendation, 1947 (No. 81). The Committee hopes that the Government will continue to provide the Office with annual inspection reports on a regular basis.

2. The Committee also notes with interest the efforts made by the Government to strengthen the powers and resources of the labour inspection services. It notes that section 2 of Ordinance No. 96.11 of 10 June 1996 amending and supplementing Act No. 90.03 of 6 February 1990 increases the investigative powers of inspectors by giving them access, through the employer, at the headquarters of the employers' organization or at the workplace, to all information on legislation and regulations relating to labour and the conditions under which work is performed. The Committee furthermore notes that Executive Decree No. 96.98 of 6 March 1996 provides for the inclusion of reports on occupational accidents and diseases in the special registers which employers are required to keep (sections 10, 12, 15 and 16), and that these registers are available to the labour inspector when checks are carried out, even when the employer is absent (section 13). The Committee hopes that these legislative provisions will promote the development of strategies for preventing occupational hazards by improving knowledge of the causes and circumstances of occupational accidents and diseases.

3. Lastly, noting with interest the information provided on the increase in the means of transport and facilities available to the labour inspection services, the Committee hopes that the Government will continue to maintain the effectiveness of the latter by providing the resources and facilities needed to accomplish their task and that it will provide the Office with information on any progress made in this regard.

Brazil (ratification: 1989)

With reference to its previous comments, the Committee notes the information about the system of inspection and penalties in the area of occupational safety and health in Brazil, provided by the Secretariat for Occupational Safety and Health (SSST) of the Ministry of Labour, the Annual Report on the work of labour inspection in the area of safety and health, as well as the response of the Government to the observations communicated by the Trade Union of Alimentation Industries Workers of Jundiaí, Cajamar, Campo Limpo Paulista, Louviera, Itupeva, Váreza Paulista and Vinhedo.

1. *Article 3, subparagraph 1(a), of the Convention. (a) Application of the legal provisions relating to safety and health.* In its previous comments the Committee noted the observations communicated by several trade unions alleging the lack of efficiency of the labour inspection concerning the application of the provisions on safety and health at work. In support of their allegations, the trade unions referred, inter alia, to reports indicating that the number of accidents increased by 26.78 per cent in 1995 as compared to 1994 and that according to an estimate by doctors and experts specializing in accidents, the enterprises are responsible for 70 per cent of the accidents. The Committee notes the information and statistical data provided by the Government in a report by the SSST. These data show an average of more than 433,474 occupational accidents between 1992 and 1996, with a death rate (number of fatal accidents per 100,000 workers) having increased 75 per cent in 1994 and fatality rate (number of deaths per 1,000 accidents) having doubled from 1992 to 1996.

As concerns occupational diseases, the increase of recorded cases was found to be sevenfold by comparison between data from 1990 (5,217) and 1996 (34,889). The

Committee notes the statement by the SSST that "the analysis gives a worrying picture" and that "from indicators of benefits paid for occupational accidents and diseases the situation is clearly unacceptable ...". The epidemiological analysis of these data enabled the SSST to identify the economic activities with the most worrying figures: mining industry; forestry; forestry exploration; construction and conversion industries; transport, storage and communication, electricity, water and gas supply.

The Committee notes the information provided by the Government that in accordance with the guidelines of the Plan of Action of the Ministry of Labour for 1996-98, a Programme to Enhance Working Conditions and Environment is being developed through the following action subprogrammes: (i) National Programme to Combat Occupational Accidents and Diseases; (ii) Reform Programme to Update the Legal Framework for Occupational Safety and Health; (iii) Programme to Combat Child Labour and Protect Adolescent Workers; (iv) Workers' Nutrition Programme; and (v) the Programme for the Priority of Management Techniques in Occupational Safety and Health. The National Programme to Combat Occupational Accidents and Disease combines diverse educational, preventive and inspection approaches under the basic guidelines of enhancing effectiveness through steering action towards the economic sectors with the highest rates of occupational accidents and diseases; broadening participation by society as a whole, in particular employers and workers; building a more efficient action model; and maximizing resources. The Committee notes that for 1998 the construction sector was made the national priority given the high occupational accident rates found in all regions. The Committee asks the Government to indicate whether the implementation of the National Programme to Combat Occupational Accidents and Disease has resulted in reduction of their numbers as well as to provide information on other practical results achieved through the programme.

(b) Application of the provisions to combat child labour and forced labour. The Committee recalls that in previous comments it noted the establishment of an Executive Group for the elimination of forced labour (GERTRAF, Decree No. 1538/1995) and that priority would be given to inspection activities to combat forced labour and work by children and young persons. Referring also to the above-mentioned action subprogramme to combat child labour and protect adolescent workers, the Committee hopes that the Government will provide detailed information on the inspections carried out, and the results achieved through warning and advice or penalties imposed.

2. *Article 16. Frequency and thoroughness of inspection visits.* The Committee notes the information provided by the Government on the National Campaign to Combat Occupational Accidents and Diseases (October 1996-April 1997), conducted within the framework of the National Programme to Combat Occupational Accidents and Diseases, which targeted priority areas and resulted in an increase of the number of inspections by some 29 per cent and the number of enterprises inspected by some 38 per cent in 1997; most of the inspections being carried out in establishments with fewer than 50 workers. The Committee notes these efforts made by the Government to increase the frequency of inspection visits and asks the Government to provide information on the results obtained through these inspections and on any subsequent measures undertaken or envisaged after the conclusion of the campaign in order to increase the number of inspections so that workplaces be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.

3. *Article 6. Status and conditions of service of the inspection staff.* The Committee notes the allegations by the Trade Union of Alimentation Industries Workers of Jundiaí, Cajamar, Campo Limpo Paulista, Louviera, Itupeva, Vároza Paulista and

Vinhedo concerning the existence of connivance, corruption and extortion within the inspection activities in the area of the enforcement of standards of safety at work. The Committee also notes the statement in their observations alleging the existence of an illegal system of protection and immunity against inspection of those enterprises that hire professionals connected with the inspection authorities.

The Committee notes the information in the Government's response, received at the ILO on 28 November 1997, that a commission was established to verify the alleged facts and that the Government will inform the ILO about its conclusions. The Committee trusts that the Government will provide such information in its next report. Recalling also that problems of application of *Article 6* have been raised previously, the Committee requests the Government to report on measures taken to ensure that the conditions of service of inspection staff are such as to assure them of stability in employment and independence from improper external influences.

The Committee is addressing a request directly to the Government in relation to the application of *Articles 2, paragraph 1, 6, 9, 15, paragraph (a), 18, 20 and 21* of the Convention.

Costa Rica (ratification: 1960)

The Committee notes the information provided by the Government in its report, which was received by the ILO on 18 November 1998, and its response to the observations made by the Inter-Confederal Committee of Costa Rica (CICC), to which the Committee referred in its previous comment.

1. *Article 7, paragraph 3, of the Convention.* The Committee notes that, in reply to the allegations of the CICC that the absence of adequate training affects the effectiveness of labour inspection, the Government refers to the training provided to inspectors at the beginning of their careers and regular further training during their careers, and refers specifically to the exchanges of views with other professionals designed to adapt their knowledge to the changes which have occurred in labour legislation. The Committee also notes that, in a communication from the National Directorate of the General Labour Inspectorate, which was attached to the Government's report, a description is provided of the efforts made to professionalize the inspection services, which includes many specialists in such different branches as law, social sciences and occupational medicine. The Committee also notes the information provided by the Government concerning a mobility programme which has resulted in the departure of many inspectors and the arrival of new officials and, considering appropriate training to be all the more necessary, it requests the Government to provide detailed information on the initial and further training provided to inspectors for the performance of their duties.

2. *Article 10.* The Committee notes that the CICC alleges that there is an insufficient number of inspectors to secure the effective discharge of the duties of the inspectorate and that it considers that this number, which is around 120 inspectors, should be increased to 400 inspectors at least. In its reply, the Government states that the number of inspectors doubled in 1996 from 50 to around 117. The Committee also notes the information contained in the above communication concerning the inspections carried out, the number of which increased during 1997, and on the sectors in which inspections were planned for 1998, namely construction and transport. Noting the substantial difference between the assessment made by the CICC of the number of inspectors considered to be necessary and their actual numbers, the Committee requests the Government to provide detailed information on changes in the numbers of labour inspectors which should be sufficient to ensure the effective discharge of the duties of the inspectorate.

3. *Article 11.* The Committee notes that the CICC considers that the arrangements made to furnish labour inspectors with local offices and transport facilities are insufficient, and that it alleges that the failure to reimburse inspectors their travel expenses is a considerable obstacle to the activities of the inspectorate. The Committee notes that the Government, without denying the low level of resources provided, blames them on budgetary constraints and states that over recent years efforts have been made to provide logistical support to the national and regional directorates of the labour inspectorate, including transport facilities and the reimbursement of travel expenses, as noted also in the above communication from the Directorate of the Labour Inspectorate. The Committee hopes that the Government will continue to provide information on any improvement in the situation relating to the application of this Article of the Convention.

4. The Committee notes the commencement in November 1997 of a subregional project, which includes Costa Rica, to modernize and strengthen labour administrations, which includes an important component devoted to labour inspection. It hopes that the Government will provide information on the implementation of the project and its positive effects on the organization and operation of the labour inspectorate.

5. The Committee is addressing a request directly to the Government concerning the application of a number of other points.

Italy (ratification: 1952)

The Committee notes the Government's report. It also notes the comments made by the Trade Union Association of Credit Enterprises on the manner in which the Convention is applied.

Articles 3 and 5. The Committee notes, in accordance with Legislative Decree No. 687 of 7 November 1996 respecting the unification of peripheral services and the reorganization of regional and provincial labour directorates, that regional labour directorates include a labour inspection section entrusted with the technical functions previously discharged by regional labour inspectorates, and that provincial labour directorates include a labour inspection section responsible for the technical functions of a legal nature related to the inspection activities previously discharged by provincial labour inspectorates. The Committee also notes, from the information provided in the Government's report, that the principal functions of the labour inspection system prescribed by *Article 3, paragraph 1, of the Convention* are discharged by different public structures, including the labour inspection services. It also notes that the labour inspection services fulfil functions in many related fields. The Trade Union Association of Credit Enterprises (ASSICREDITO) raises the issue of the transfer to local health units, under the terms of Act No. 833 of 23 December 1978, of the functions of the labour inspectorate with regard to prevention and occupational safety and health. The Committee had already expressed its concern in its previous observation with regard to the problems of coordination that such a transfer could create and refers in this respect to the comments of the Trade Union Association of Petrochemical and Allied Enterprises (ASAP). However, the Committee notes that the amendments to the legislation announced in the Government's report transmitted in 1991 to restore to the inspection services a large number of their functions in order to improve the coordination of the bodies contributing to supervision have not achieved their objective. The Committee recalls that, in accordance with point (a) of *Article 5*, the competent authorities shall make appropriate arrangements to promote effective cooperation between the inspection services and other government services and public or private institutions engaged in similar activities. It hopes that the Government will not delay the implementation of measures to give effect to this provision and that it will provide detailed information in its next report on any progress achieved in this respect.

Article 4. The Committee notes the Government's statement that the reforms to decentralize certain functions are under way, but that labour inspection will continue to be covered by the central administration, and it requests the Government to provide information on the progress made in these reforms and their eventual impact on the labour inspectorate.

Articles 20 and 21 of the Convention. The Committee notes that the last annual report of the inspection services transmitted to the ILO covers the year 1992. The Government's subsequent reports on the application of the Convention have described substantial changes in the law and regulations in the fields of the organization and distribution of the responsibilities inherent to the functions of labour inspection. The Committee regrets that, due to the absence for five years of annual inspection reports, it is not in a position to assess the impact of these changes on the progress made in practice in the application of the Convention. The Committee reminds the Government that copies of the annual reports on the work of the inspection services under the control of the central labour inspection authority shall be transmitted to the Director-General of the ILO within three months of their publication *(Article 20, paragraph 3)*. It emphasizes that annual inspection reports are essential documents for the assessment of the functioning of the inspection system envisaged by the Convention and it requests the Government to take the necessary measures to ensure that the above reports, which must cover each of the subjects enumerated in *Article 21*, are in future transmitted to the ILO within the prescribed time-limits.

Jamaica (ratification: 1962)

The Committee notes the Government's report for the period ending 31 May 1998.

Article 13, paragraphs 2(b) and 3, of the Convention. Remedial powers. In its previous comments, the Committee noted that there were no provisions in the national legislation empowering factory inspectors to require measures with immediate executory force in the event of imminent danger to the health and safety of workers and expressed the hope that the Government would be in a position to adopt in the near future a law including such provisions. The Committee notes the indication of the report that Industrial Safety Inspectors are not empowered to take the steps stated in paragraph 2, except in the construction industry where the inspectors can issue stop orders, but that they may apply to the courts for a court order to stop or prevent the operation of a factory in the event of imminent danger to the health or safety of workers. The Committee further notes the indication in the report that the Occupational Health and Safety Act which is being drafted will provide labour inspectors with the powers prescribed in *Article 13*. The Committee asks the Government to provide information, including the relevant texts of the specific provisions of the national legislation empowering inspectors to issue stop orders in the construction industry and to apply to the courts for a court order in other cases. It hopes that the Government will also report on progress made in the adoption of the Act on Occupational Health and Safety.

Jordan (ratification: 1969)

With reference to its previous observation, the Committee notes with satisfaction that the Labour Code adopted by Act No. 8 of 1996 and the Labour Inspection Regulations No. 56 of 1996 give effect to a number of provisions of the Convention.

1. *Adoption of legislation and regulations*

Article 3 of the Convention. The Committee notes that Regulations No. 56 of 1996 specify that among the functions of the labour inspection system shall be those provided for in *paragraph 1(a), (b) and (c)* of this Article; that any other duties entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties; and that under section 7 of these Regulations, labour inspectors shall not be responsible for any tasks that are incompatible with their duties. In addition, under section 120 of the Labour Code, labour inspectors are now relieved of the task of conciliation in the event of collective labour disputes, this responsibility having been entrusted to specially appointed Ministry of Labour officials.

Article 5. The Committee notes that the cooperation and collaboration referred to in this Article are encouraged by section 79 of the Labour Code, which provides that the Minister, in consultation with the competent official bodies, shall prescribe the appropriate measures to ensure the prevention and protection of workers from occupational hazards and illnesses and to maintain a working environment that is conducive to the health and safety of workers; by section 83, which provides that employment in certain posts may be subject to a medical examination of the applicant to ensure that he or she is physically capable of doing the job; by section 85, according to which the Council of Ministers, at the recommendation of the Minister of Labour, can issue instructions to establish occupational safety and health committees, appoint supervisors for public and private establishments and define the powers and duties of these committees and supervisors (subparagraph (a)); and by section 3(c) of Regulations No. 56 of 1996 under which labour inspectors are responsible for encouraging cooperation between employers and their organizations, on the one hand, and workers and their organizations, on the other (subparagraph (b)).

Article 7, paragraphs 1 and 2. The Committee notes that, in accordance with these provisions, the qualifications required for the recruitment of labour inspectors are fixed by Regulations No. 56 of 1996.

Article 12, paragraph 2. The Committee notes that, under section 5(a) of Regulations No. 56 of 1996, the labour inspector is required to notify the employer or his representative of his presence when making an inspection visit, unless he believes that such notification may prevent him from carrying out his duties.

Article 14. Compulsory notification by employers of labour inspectors of any industrial accidents and cases of occupational diseases is provided by section 9 of Regulations No. 56 of 1996.

Article 15. The Committee notes that effect has been given to these provisions by section 6 of Regulations No. 56 of 1996.

2. *Practical application of the Convention*

The Committee notes with interest the detailed information on the efforts made to strengthen the labour inspection services and achieve a balanced distribution of labour inspection staff, and to provide continual training for labour inspectors (*Articles 7, 10 and 11* of the Convention). The Committee also notes the annual activities reports of the labour inspection service published in the annual reports of the Ministry of Labour for 1993, 1994 and 1995 which provide information requested under *Article 21(b), (c), (d), (e) and (f)*, as well as the information given in the annex to the Government's report of 1996. The Committee also notes the information provided in answer to the request contained in its previous observation on the geographical distribution of the labour inspectors and the proportion of women in the inspection service *(Article 8)*. The Committee would be grateful if the Government would continue to provide such information to the ILO, in particular in the annual reports under *Article 20*.

A request regarding certain points is being addressed directly to the Government.

Lebanon (ratification: 1962)

Articles 3 and 21 of the Convention. The Committee notes with satisfaction the provisions of Order No. 451/2 of 16 August 1997 which, in accordance with *Article 3, paragraph 1(b) and (c)*, of the Convention, provides that the labour inspection, prevention and safety authorities must supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions (section 2 of the Order), to bring to the notice of the Ministry any defects or abuses not specifically covered by existing legal provisions, in particular with regard to working hours, wages, occupational safety and health, and the welfare and employment of young people (section 1), and to include in their annual activity reports the information required under *Article 21* of the Convention (section 3).

A request regarding certain points is being addressed directly to the Government.

Mali (ratification: 1964)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee takes note of the Government's report which refers to information supplied previously on the subject of the labour inspection situation. It also takes note of the project to support labour services with the general objective of dynamizing these services and strengthening their intervention capacity.
>
> The Committee is sending directly to the Government a direct request on a number of points.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Morocco (ratification: 1958)

The Committee notes the information provided by the Government in its reports of May and October 1998 in reply to its previous comments. The Committee also notes that the most recent annual report on the activities of the labour inspectorate transmitted to the ILO in accordance with *Articles 20 and 21 of the Convention* covers the year 1989. It once again requests the Government to take the necessary measures to ensure that annual inspection reports containing all the information required under *Article 21* are transmitted to the ILO within the time-limits set out in *Article 20*.

Child labour and labour inspection. The Government states that labour inspectors are empowered by law to carry out inspections in artisanal workplaces with a view to verifying compliance with the provisions of the national legislation to protect employees engaged in these workplaces. It emphasizes that the current legislation contains specific provisions concerning child labour in the artisan sector and states that the officials responsible for inspection ensure observance of these provisions with all the necessary rigour, and particularly those concerning the age of admission to employment and occupational safety and health. The Committee also notes the information that the Employment Department has adopted a series of measures to reinforce supervisory action in all the economic branches in which child labour is widespread and that a cooperation programme has been launched with the ILO to identify sectors which use child labour.

The Committee recalls in this respect that in its previous observation in 1996, which was repeated in 1997, it requested the Government to supply detailed information on the activities of the labour inspectorate, particularly in carpet factories where child labour is widespread according to the information provided previously by trade union organizations. The Committee trusts that the Government will supply this information as soon as possible and that it will indicate the number and frequency of inspections, the number and nature of the violations reported, the contraventions registered and the penalties imposed.

The Committee is addressing a request directly to the Government on a number of points.

Niger (ratification: 1979)

The Committee notes with satisfaction that sections L.510 and L.510.10(e) of the Labour Code of 29 June 1996 give effect to *Articles 3, paragraph 1(c), and 12, paragraph (c)(iii), of the Convention.*

The Committee is addressing a request directly to the Government on a number of points.

Peru (ratification: 1960)

In its previous comments, the Committee noted the observations by the Association of Labour Inspectors of the Ministry of Labour and Social Development of October and November 1996, which were communicated to the Government for comment. The Committee notes the Government's response to the Association's allegations (document No. 001-97-TR/OAJ-OAI) as well as the Government's report for the period ending September 1997. The Committee observes that the organization of the labour inspectorate is governed in particular by Decree No. 004-96-TR of 10 June 1996 on the procedure for labour inspection.

Article 6 of the Convention. The Committee recalls the observations of the Association of Labour Inspectors alleging the non-conformity with this Article of the Convention of the new recruitment procedures introduced under Emergency Decree No. 015-96-TR of 21 April 1996. The Committee notes the Government's response to these allegations, as well as the indication in its report to the effect that the above Decree established a Programme of Labour Inspection and Legal Orientation and that recourse was held to an external competition so as to hire professionals in areas such as law, economics, accounting, industrial engineering, social work. The Committee hopes that the Government will provide information on the nature of the contract under which these new labour inspectors were recruited, the difference, if any, of their status and conditions of employment with those of inspectors recruited previously, and on any measures adopted or envisaged to ensure that labour inspectors are assured of stability of employment and are independent of changes of government and of improper external influences.

Article 10. The Committee notes from the report that in September 1997 approximately 100 labour inspectors were working in the Sub-Directorate of Inspection of the Regional Direction of Labour and Social Development of Lima and Callao. The Committee asks the Government to provide information on the total number of labour inspectors and their distribution among administrative subdivisions of the country.

Article 14. The Committee notes the indication of the report that, according to the information of the Office of Statistics and Information of the Ministry of Labour and Social Development, 44 work accidents occurred in 1996. The Committee hopes that the Government will provide information, including relevant regulations, on the current procedure for the registration of work accidents and occupational diseases and their notification to the competent state authorities.

Article 16. The Committee notes the indication of the report that 21,115 planned inspection visits and 9,203 inspection visits of a special character took place from August 1996 to July 1997. The Committee also notes that the absence of information on the total number of workplaces liable to inspection and the number of workers employed therein makes it impossible to evaluate figures presented by the Government in order to determine whether the frequency of inspections of workplaces is sufficient to ensure the effective application of the relevant legal provisions. The Committee hopes that the Government will provide the necessary information in the very near future.

Articles 20 and 21. In its previous comments, the Committee noted that no annual report on labour inspection has been received since the ratification of the Convention in 1960 and expressed the hope that all appropriate measures would be taken without delay so that annual reports, containing the information required under *Article 21*, will be published and sent to the ILO within the time-limits laid down in *Article 20*. The Committee notes with regret that despite all previous requests the Government did not transmit a copy of such report to the ILO. The Committee emphasizes once again that the preparation and publication of annual general reports on the work of inspection services is an essential means for assessing how the Convention is applied and for planning the corrective measures which should be taken. The Committee trusts that all appropriate measures will be taken without delay so that annual reports, containing the information required under *Article 21* of the Convention, will be published and sent to the ILO within the time-limits laid down in *Article 20*.

Portugal (ratification: 1962)

The Committee notes the information provided by the Government in its report for 1997 and in its response to the observations made by the Confederation of Portuguese Industry (CIP) and the General Confederation of Portuguese Workers (CGTP), which were transmitted by the Government with its report.

Articles 3, 5, 17 and 18 of the Convention. Enforcement of legal provisions relating to the employment of children and young persons; information and advice. The Committee notes the information provided by the Government concerning the activities to combat child labour, and particularly those of the general labour inspectorate, which also cooperates with the National Commission for the Elimination of Child Labour. In this respect, the CGTP considers that, although recourse to child labour cannot be entirely and exclusively imputed to the ineffectiveness of inspection activities, it is nevertheless certain that effective and generalized action, particularly in regions, sectors and enterprises in which it is known or suspected that recourse to child labour is more frequent, would play a dissuasive role, particularly if inspections resulted in penalties adapted to the seriousness of the cases *(Articles 3, paragraph 1(a), 17 and 18)*.

The Committee notes the detailed statistics provided by the Government on the specific activities of the labour inspectorate in relation to child labour over the past ten years, and that the figures for 1996-97 show that the violations reported by inspectors relate primarily to non-compliance with the minimum age for admission to employment or work. The Committee requests the Government to provide information on the development and any intensification of the activities of the labour inspectorate relating to the enforcement of legal provisions respecting the employment of children and young persons, the cases of child labour detected and the penalties imposed *(Articles 3, paragraph 1(a), 17 and 18)*. The Committee notes that, for its part, the CIP emphasizes the strengthening of the preventive role of the inspectorate and the Committee recalls the role to be played by labour inspection in supplying technical information and advice to employers and workers and collaborating with them or their organizations *(Article 3, paragraph 1(b), and Article 5(b))*.

Articles 10 and 11. Human and material resources. The Committee notes the comments of the CGTP concerning the insufficient level of the human and material resources which are necessary for the effective discharge of the duties of the inspectorate, which impedes the detection of cases in which legal provisions are not observed. The Committee notes from the figures provided by the Government that in 1998 there were some 343 labour inspectors (311 in 1997 with 32 entering their functions in 1998) and that the recruitment of 20 new inspectors is also envisaged. The Committee requests the Government to continue supplying information on changes in the personal and material resources of the inspection services and their impact on the effectiveness of inspection activities.

Spain (ratification: 1960)

The Committee notes that the observations made in January 1998 by the General Union of Workers (UGT), whose allegations relate to the scope of labour inspection, which is considered too limited; the insufficiency of the human and material resources available to the inspectorate; the need to reform the functions of labour inspectors; the need for a statistical evaluation of the effectiveness of the inspectorate in terms of the legal action commenced and brought to completion and the penalties imposed; and the absence of measures to promote collaboration between the labour inspectorate and employers and workers or their organizations.

Noting that the Government has not provided a reply to the observations of the UGT, the Committee hopes that it will reply to them in its next report and that it will provide full information on the application of the Convention in law and in practice, taking into account developments in labour inspection following the adoption of Act No. 24/1997 respecting labour inspection and social security.

Sri Lanka (ratification: 1956)

The Committee notes the information provided by the Government in its report of May 1998, the observations on the application of the Convention presented by the Labour Officers Association in April 1998, and the Government's response of September 1998 to these observations. The Committee has also taken note of the discussion which took place in the Committee on the Application of Standards of the Conference in 1997 in relation to the application of the Convention by Sri Lanka.

Article 3, paragraph 1(a), of the Convention. Protection of children and young persons; activities of the labour inspectorate in export processing zones. In its previous comments, the Committee requested the Government to provide information on the supervision of the application of the legal provisions to protect children and young people, particularly the Employment of Women, Young Persons and Children Act, No. 47 of 1956, and on the activities of the labour inspectorate in export processing zones (EPZs).

In respect of protection of children and young persons, the Committee notes the statement of the Government representative during the discussion in the Conference that no child labour existed in the organized sector of the country, but that 21 cases had been filed against the employment of children in the domestic sector in 1996 and 1997. The Committee notes the information in the Government's report that the Probation Officers of the Department of Probation and Child Care Services had been empowered to carry out inspections with regard to child labour which would reduce the workload of the Labour Officers and enable them to carry out their functions efficiently under the provisions of other laws. The Committee notes, however, that the lack of relevant data does not permit a meaningful evaluation of the efficiency of enforcement of the legislation aimed at the protection of children and young persons. In this connection, the Committee also notes that no annual report on the work of the inspection services has been transmitted to the ILO. The Committee hopes that the Government will provide precise information on the total number of enterprises subject to labour inspection, the annual number of inspections conducted under the Employment of Women, Young Persons and Children Act of 1956, the total number of inspectors entrusted with the enforcement of its provisions, the number of violations and the number of penalties imposed. The Committee also asks the Government to indicate whether the officers of the Department of Labour still retain enforcement authority under the Employment of Women, Young Persons and Children Act and, if so, to describe how cooperation is organized between the Department of Probation and Child Care Services and the Department of Labour as concerns the enforcement of this Act. Finally, taking into account the recognition by the Government representative of the fact that children work in the unorganized sector, particularly in domestic service, the Committee hopes that the Government will also indicate the specific measures taken or envisaged in order to ensure effective enforcement in this area.

In respect of the activities of the labour inspectorate in export processing zones, the Committee notes the statement of the Government representative that all labour laws applied to all industrial concerns in these zones. Further, according to the Government representative, the officers in the Factories Division of the Department of Labour carried out inspections on a regular basis as well as on the basis of complaints and the Department's Safety and Health Division conducted regular inspections regarding matters on occupational health in EPZs. The Committee wishes to stress again that the absence of comprehensive statistics, required under *Article 21* of the Convention, does not allow for an appreciation of the efforts of the Government aimed at the overall increase in efficiency of work of the labour inspection system in EPZs. The Committee expects to evaluate this matter as soon as the relevant statistical information from the Government is received.

Articles 10 and 16. Number of labour inspectors; frequency of inspection visits. The Committee notes the comments by the Labour Officers Association alleging that the labour administration system of the country suffers from a lack of inspection staff because, according to the Association, of the total number of 314 available positions there are currently 56 vacancies, which have not been filled for quite a long time.

The Committee notes the statement of the Government representative that in 1997 the Labour Inspectorate comprised 300 labour officers, 57 assistant commissioners and 12 deputy commissioners and that measures would be taken to increase the number and frequency of inspections. The Committee further notes the indication in the Government's response to the comments of the Labour Officers Association that the Department of Labour has the intention to enhance the cadre of labour officers at least by 150. The Committee hopes that the Government will indicate any progress made in this respect and supply information on the measures taken or envisaged in order to increase the number of inspectors and the number and frequency of inspections, so that workplaces are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.

The Committee is addressing a request directly to the Government in relation to the application of *Articles 2, paragraph 1, 5(b), 6, 7, 9, 20 and 21* of the Convention.

Turkey (ratification: 1951)

Further to its previous comments the Committee notes the information provided by the Government in its report for the period ending 31 May 1997 as well as in the Labour Inspectorate General Report for 1996. It also notes the observations by the Confederation of Turkish Employers' Associations (TISK) and by the Confederation of Turkish Trade Unions (TÜRK-IŞ).

1. *Article 2 of the Convention. Scope of the national system of labour inspection.* The Committee notes the observation of TÜRK-IŞ alleging that among the registered establishments in Turkey there are many small workplaces difficult to supervise and inspect; and that it is believed that there are about 4 million clandestinely employed workers in hundreds of thousands of unregistered small workplaces all around the country. The Committee also notes that for its part TISK in its observation points to the importance of bringing the informal sector under register, as only registered workplaces can be inspected and nothing can be done as concerns those which are not under coverage. The Committee hopes that the Government will provide its response to these allegations and indicate, in particular, the measures undertaken or envisaged in order to cover by the system of labour inspection the work performed in the informal sector, especially the work of children.

2. *Article 5, paragraph (b). Collaboration.* The Committee notes the observations by TÜRK-IŞ that there is no systematic and effective collaboration between the labour inspectors and workers and their organizations. The Committee hopes that the Government will provide information on the arrangements made in order to promote such collaboration.

3. *Articles 10 and 16. Number of labour inspectors, workplace visits.* The Committee notes the observations by TÜRK-IŞ alleging, inter alia, that it is impossible to discharge effectively the duties of the inspectorate and to inspect workplaces as regularly and efficiently as required by the Convention with approximately 400 inspectors of the Social Insurance Institution and with 633 labour inspectors of the Ministry of Labour and Social Security. The Committee recalls in this connection that in its previous comments it asked the Government to provide information on the measures taken or envisaged to ensure that the number of inspectors is sufficient to secure the effective discharge of the duties of the inspectorate and to ensure that workplaces are inspected as often and thoroughly as is necessary. The Committee notes the information provided by the Government that the list of staff of the Labour Inspection Board of the Ministry of Labour and Social Security consists of 1,020 positions (355 chief labour inspectors, 405 labour inspectors and 260 assistant labour inspectors). In 1996 there were 690 persons employed as inspection staff of whom there were 348 chief labour inspectors, 180 labour inspectors and 162 assistant labour inspectors (698, 353, 182 and 163 respectively in 1995). The Committee also notes the information that in 1996 there were 41,194 administrative inspections (35,193 in 1995), 32,003 safety and health inspections (28,686 in 1995) as well as several "project inspections": inspections in the construction industry; of petrol stations; of shoe manufactures in the province of Gazýantep; of the liquid oxygen production and refilling installations; in the textile industry; of carpet manufacturers and factories; of health establishments; and in the food sector in the Ankara province and the surrounding districts. In connection with the above the Committee hopes that the Government will indicate the measures taken or envisaged in order to fill vacant positions of the labour inspection staff with a view of increasing the annual percentage of actually inspected workplaces and employees. The Committee also hopes that the Government

would continue to supply information on the new "project inspections" as well as on the results of such inspections undertaken in the past.

4. *Article 20, paragraph 1. Annual general report.* The Committee notes the observation of TÜRK-IŞ alleging that the annual general report on the work of the inspection services is not published in such a manner as to enable a reliable evaluation of the inspection and hopes that the Government will provide information in response to these allegations.

United Arab Emirates (ratification: 1982)

The Committee notes the Government's reports and the information provided in response to its previous comments. It notes with satisfaction the detailed information concerning the programme and progress of the initial and further training of labour inspectors, their geographic distribution, by category and by gender, as well as the means which are made available to them to carry out their missions. The Committee also notes the 1996 Annual Report relative to the training sessions of administrative personnel, according to which 184 employees of the inspection services, which is the total number of employees, have benefited from these programmes. Moreover, the Committee notes that 15 new positions have been created for labour inspectors and that the new appointees shall all be holders of university degrees in various disciplines. It would be grateful if the Government would continue to provide information in its next report on the composition and the activities of the labour inspectorate.

The Committee is addressing a request directly to the Government on the application of *Articles 14, 20 and 21 of the Convention.*

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Antigua and Barbuda, Belarus, Brazil, Burkina Faso, Burundi, Cape Verde, Costa Rica, Croatia, Cuba, Djibouti, Finland, Gabon, Grenada, Guatemala, Guinea-Bissau, Hungary, Iraq, Jamaica, Japan, Jordan, Republic of Korea, Kuwait, Lebanon, Libyan Arab Jamahiriya, Lithuania, Madagascar, Mali, Morocco, Netherlands, Niger, Paraguay, Peru, Portugal, Sao Tome and Principe, Singapore, Sri Lanka, Turkey, United Arab Emirates.*

Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948

Algeria (ratification: 1962)

The Committee notes the information contained in the Government's report.

The Committee recalls its previous comments concerning sections 1, 3, 4 and 5 of Legislative Decree No. 92-03 of 30 September 1992 on combating subversion, as well as sections 43 and 48 of Act No. 90-02 of 6 February 1990 on compulsory arbitration, and that these sections contain provisions which could jeopardize the right of workers' organizations to administer their activities and formulate their programme of action to defend the economic, social and occupational interests of their members, without interference from the public authorities.

The Committee notes in the first instance that the Government reiterates the response provided in its previous report, namely that Legislative Decree No. 92-03 of 30 September 1992 is not directed against the right to strike or the right to organize. The Committee, nevertheless, recalls that section 1, read in conjunction with sections 3, 4 and 5 of Decree No. 92-03, defines as subversive acts any offence directed, in particular, against the stability and the normal functioning of institutions, which aim to: (1) obstruct the operation of establishments providing public services; or (2) impede traffic or freedom of movement in public places or highways, under penalty of severe sanctions, including up to 20 years' imprisonment.

The Committee requests the Government to take measures, through legislation or regulation, to ensure that these provisions cannot be enforced against workers who are peacefully exercising their right to strike, which is an intrinsic corollary of the right to organize protected by the Convention.

Moreover, the Committee notes with interest that the Government's report indicates that the supervisory, advisory and aid programmes developed by the labour inspection services in the labour market, as well as those to resolve labour disputes, do not reveal any major obstacles in respect of the exercise of the right to organize as well as the right to strike.

The Committee, nevertheless, recalls that the power conferred on the Minister or the competent authority, under sections 43 and 48 of Act No. 90-02 of 6 February 1990, to refer an industrial dispute to the Arbitration Commission can only be used in the event of continued strike action and after the failure of mediation, provided for under section 46. The Minister, the Wali or the President of the Communal Peoples' Assembly concerned can, "when urgent social and economic needs require" and after consultation with the employer and the workers' representatives, refer the industrial dispute to the National Arbitration Commission.

The Committee wishes to recall once again that compulsory arbitration should only be used at the request of both parties and/or that arbitration to end a strike should only be imposed when strikes occur in essential services in the strict sense of the term, namely those whose interruption would endanger the life, personal safety or health of the whole or part of the population, or where the extent and duration of the strike could provoke an acute national crisis. The Committee therefore requests the Government to amend its legislation accordingly to bring it into greater conformity with the principles of freedom of association.

The Committee requests the Government to indicate in its next report the measures taken or envisaged to bring its legislation into conformity with the requirements of the Convention.

Antigua and Barbuda (ratification: 1983)

The Committee refers to its previous comments on the need to amend sections 19, 20, 21 and 22 of the Industrial Courts Act, 1976, and the extensive list of essential services in the Labour Code, which can be applied to prohibit the right to strike at the request of one party. Under these provisions a trade dispute may be referred to the court at any stage by the Minister when he is informed of its existence, and by one party within ten days of such knowledge, and strikes are then prohibited under penalty of imprisonment. In addition, an injunction may be issued against a legal strike when the national interest is threatened or affected.

Having noted with interest the judgement of the Judicial Committee of the Privy Council, dated February 1993, which had held that in Case No. 1296, examined by the Committee on Freedom of Association, dismissal of strikers had been unfair, the Committee had requested the Government to keep it informed of any legislative developments with respect to the right to strike in conformity with the principles of freedom of association.

The Government indicated in its report in 1995 that in its opinion the Antigua legislation in relation to the right to strike is in conformity with the principles of freedom of association and the limitations would be in the interest of a civilized and orderly society. It had also given the long list of essential services where there is an established process to address industrial matters as laid down in the Labour Code and in the Industrial Courts Act.

The Committee takes note of this information. However, it would ask once again the Government to indicate in its next report the measures taken or contemplated to ensure that the powers of the Minister to refer a dispute to binding arbitration to ban a strike are restricted to strikes in essential services in the strict sense of the term, that is to say, only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population or in case of an acute national crisis or in relation to public servants exercising authority in the name of the State, in order to bring its legislation into full conformity with the principles of freedom of association as soon as possible.

[The Government is asked to report in detail in 1999.]

Argentina (ratification: 1960)

The Committee notes the information provided by the Government representative to the 1998 Conference Committee and the discussion that followed, as well as the supplementary information subsequently provided by the Government. The Committee also notes the detailed information provided by the Government during the Conference with regard to the provisions of Act No. 23.551 respecting trade union associations, which take into account the Committee's comments, as well as the statistical data and information covering trade union activities in Argentina in the decade which has elapsed since the above Act came into force.

The Committee recalls that its previous comments referred to:

- section 28 of the Act, which requires the petitioning association, in order to contest the trade union status of an association, to have a "considerably higher" number of members;
- section 21 of implementing Decree No. 467/88, which qualifies the term "considerably higher" by laying down that the association claiming trade union status should have at least 10 per cent more dues-paying members than the petitioning association;
- section 29 of the Act, which provides that a "trade union at the enterprise level may be granted trade union status only when another first-level association and/or a trade union does not already operate within the geographical area or the area of activity or category covered";
- section 30 of the Act, which imposes excessive conditions for granting trade union status to unions representing workshops, occupations or categories of workers;
- section 31(a) of the Act, which provides that "associations which have been granted trade union status have the exclusive right to defend and represent the individual and collective interest of workers";
- section 38 of the Act, which permits only associations enjoying trade union status, and not associations which are merely registered, to be retained for the purposes of trade union quotas;

- section 39 of the Act, which exempts only associations with trade union status, and not associations which are merely registered, from taxation;
- sections 48 and 52 of the Act, which provides that only the representatives of associations which have been granted trade union status may enjoy special protection (trade union protection (*fuero sindical*)).

Firstly, with regard to the comments made by the Government in its report in respect of Act No. 23.551 guaranteeing the right to freely organize and register trade unions and for trade unions to acquire legal personality, the Committee wishes to emphasize that it has not criticized these provisions, but the requirements to acquire trade union status and the privileges which organizations with trade union status enjoy. Similarly, the Committee wishes to state that, in general terms, it is not opposed to the most representative trade union organizations acquiring "trade union status", nor to these organizations enjoying certain privileges arising from their status of the most representative organization.

Whilst recognizing that an excessive proliferation of trade union organizations may weaken the trade union movement and ultimately prejudice the interests of workers, the Committee has always considered that a legislative provision which recognizes the most representative trade union is not in itself contrary to the principles of freedom of association, provided that certain conditions are met. In this respect, the Committee has emphasized that the determination of the most representative trade union must be based on objective, pre-established and precise criteria, so as to avoid any possibility of bias or abuse. Furthermore, the distinction should generally be limited to the recognition of certain preferential rights — for example for such purposes as collective bargaining, consultation by the authorities or the designation of delegates to international organizations (see the General Survey on freedom of association and collective bargaining, 1994, paragraph 97).

1. Criteria for representativeness

With regard to the term "considerably higher" referred to in section 28 of Act No. 23.551 and section 21 of the implementing Decree, the Committee notes the Government's statement to the effect that, in the decade which has elapsed since these provisions came into force, in practice no refusals of requests to grant trade union status have been registered, which suggests that the level set of at least 10 per cent more dues-paying members as established by law, has not prevented rival associations from acquiring trade union status. In this respect, the Government nevertheless acknowledges that of the 2,776 trade unions registered, 1,317 enjoy trade union status and in the last decade only 130 new trade unions with trade union status and 915 associations have been registered. The Committee considers that the requirement of a "considerably higher" number of members constitutes a practical difficulty for associations that are merely registered to acquire trade union status. Under the circumstances, the Committee urges the Government to adopt the necessary measures to repeal this requirement, particularly since section 25(b) of the Act lays down that an organization may not acquire trade union status unless it has a minimum membership of at least 20 per cent of the workforce which it seeks to represent.

With regard to sections 29 and 30 of Act No. 23.551, the Committee notes the Government's comments but nevertheless insists that the additional conditions for granting trade union status to unions representing enterprises, workshops, occupations or categories of workers are excessive and in practice prevent these organizations from acquiring trade union status, thereby privileging trade unions representing sectors of activity. In fact, where a trade union with trade union status representing a sector of activity exists and represents workers in this activity, a union representing an enterprise, workshop, occupation or category of workers in this sector of activity may not acquire the status of the most representative organization, as provided for under section 28, even though it may be shown that it is the most representative trade union. Furthermore, taking into account the number of privileges accorded in law to trade unions with trade union status, the Committee emphasizes that, in practice, this type of provision may restrict the right of workers to establish and become members of organizations of their own choosing and the right of organizations to organize their activities without interference from the public authorities.

2. *Privileges derived from trade union status*

With regard to the provisions of the Act respecting the privileges accorded to trade unions with trade union status (representing various collective interests other than through collective bargaining (section 31), entitlement to have trade union dues deducted from wages (section 38), tax exemption (section 39), and special protection granted to trade union leaders (sections 48 and 52)), the Committee emphasizes that this accumulation of privileges could have a negative impact on workers in their choice of trade union membership. In this respect, the Committee notes the Government's statement to the effect that 91 per cent of workers belong to trade union organizations with trade union status whereas only 9 per cent belong to organizations which have merely been registered. The Committee considers that this disparity could be interpreted as workers wishing to belong to organizations which are able to develop a real trade union activity through the nature and number of privileges granted under sections 31, 38 and 39 of the Act, as is the case of trade union organizations with trade union status, thereby prejudicing unions which are merely registered and only able to represent the individual interests of their members, at their request, as provided for under section 23 of the Act.

The Committee again recalls that the distinction of the most representative union should not result in the trade union being granted privileges, as already stated, extending beyond that of priority in representation for such purposes as collective bargaining or consultation by governments, or for the purpose of nominating delegates to international bodies. In other words, the Committee shares the view of the Committee on Freedom of Association that this distinction should not have the effect of depriving trade union organizations that are not recognized as being amongst the most representative organizations of the essential means of defending the occupational interests of their members, of organizing their administration and activities and formulating their programmes of action, provided for under *Articles 3 and 10 of the Convention* (see *Digest of decisions and principles of the Freedom of Association Committee*, 1996, paragraph 309).

The Committee also recalls that when legislation confers on the most representative trade unions certain privileges in connection with the defence of their occupational interests, by virtue of which they alone are in a position to act effectively, the granting of such privileges should not be made subject to such conditions as to influence unduly the choice of workers regarding the organization to which they intend to belong (see the report of the Committee of Experts 1989, pages 125 and 126).

The Committee notes with interest the Government's request for ILO technical assistance within the framework of the application of Convention No. 87, confirming the statement of the Government representative to the Conference Committee and the written communication of the Government dated October 1998.

Furthermore, the Committee notes with interest that in its previous communication the Government confirms its willingness and openness to reaching an understanding taking into consideration the realities of the country and the issues raised by the Committee. In this context, it announces that a decree implementing Act No. 23.551 has been drafted, to be signed by the President, taking into consideration the comments of the Committee, which will be forwarded to the Office in due course.

The Committee also notes with interest that the Government has set up a working group responsible for analysing the provisions that have been criticized by the Committee which raise particularly complex legal and political concerns; the Government expresses its hope that it can count on the technical assistance of the ILO to assist in this task. The Committee hopes that the mission in question will shortly take place and will encourage productive dialogue to facilitate the application of the Convention in law and in practice.

The Committee trusts that the Government will send in the near future a copy of the decree implementing Act No. 23.551 as soon as it has been adopted.

The Committee is also addressing a direct request to the Government.

Australia (ratification: 1973)

The Committee notes the information provided in the Government's report, in particular the adoption of the Federal Workplace Relations Act, 1996, which according to the Government, substantially amended the Industrial Relations Act, 1988, and the recent adoption of legislation in certain States: the Labour Relations Legislation Amendment Act, 1997, of Western Australia, amending the Industrial Relations Act, 1979; the Workplace Relations Act, 1997, and the Industrial Organizations Act, 1997, of Queensland; and the Industrial Relations Act, 1996, of New South Wales. The Committee also takes note of the comments of the Australian Council of Trade Unions (ACTU) and the National Union of Workers (New South Wales Branch), and the Government replies to these comments.

Federal jurisdiction

The Workplace Relations Act, 1996

The Committee observes firstly that this major restructuring of the law governing labour relations is enshrined in a long and complicated statute. The Committee again expresses the hope that the Government will make available simplified summaries of the legislation to workers and employers.

Articles 3 and 10 of the Convention

Organizing administration and activities to further and defend the interests of workers. On the issue of strikes, the Government states that the Act prohibits strike action only in the following circumstances: (i) in relation to the period during which a collective agreement under the Act is in operation (section 170MN); (ii) in support of a claim for strike pay (section 187AB); and (iii) with respect to industrial action with the intent of coercing employers and eligible persons to take certain action for various reasons relating primarily to membership or non-membership of industrial associations (sections 298P and 298S). The Government states further that the Act provides for certain industrial action to be protected from civil liability and provides access to various legal remedies in respect of "unprotected" industrial action if affected parties wish to seek them. The Committee is of the view that given that where a strike is "unprotected" under the Act, it can give rise to an injunction, civil liabilities and dismissal of the striking workers (sections 127, 170ML, 170MT, 170MU), even if these consequences are not automatic, for all practical purposes, the legitimate exercise of strike action can be made the subject of sanctions. The Committee will now turn to consider whether such limitations on strike action conform with the requirements of the Convention.

(i) Restrictions on the subject-matter of strikes

The Committee notes that protected industrial action may be taken only during a bargaining period in negotiations for a certified agreement; thus, the subject- matter of industrial action is limited in scope to those matters that may be covered by a certified agreement, namely, matters pertaining to the relationship between an employer and employees in a single business or part thereof (section 170LI). The Committee notes that by linking the concept of protected industrial action to the bargaining period in the negotiation of single-business certified agreements, the Act effectively denies the right to strike in the case of the negotiation of multi-employer, industry-wide or national-level agreements, which excessively inhibits the right of workers and their organizations to promote and protect their economic and social interests. The Committee notes further that the Act prohibits industrial action with the aim of coercing an employer to make payments in relation to periods of industrial action (sections 166A and 187AB), and that industrial action can lose protected status if it involves a demarcation dispute (sections 166A and 170MW), which also, in the view of the Committee, excessively limit the subject- matter of a strike.

(ii) Prohibition of sympathy action

The Committee notes that the bargaining period, during which protected industrial action can take place, can be terminated or suspended for a number of reasons (section 170MW). Once the bargaining period is terminated or suspended, the industrial action is no longer "protected". The Committee notes that sympathy action is effectively prohibited under this provision (section 170MW(4) and (6)). Industrial action also remains unprotected if it involves secondary boycotts (section 170MM). The Committee recalls in this regard that a general prohibition on sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is lawful (see General Survey on freedom of association and collective bargaining, 1994, paragraph 168).

(iii) Restrictions beyond essential services

The Committee notes that the bargaining period can be terminated or suspended, thereby divesting industrial action of its protected status, not only where the industrial action is threatening to endanger the life, the personal safety or health, or the welfare of the population or part of it, but also where it is threatening to cause significant damage to the Australian economy or an important part of it (section 170MW(3)). The Committee notes further that registration of an organization may be cancelled where it or its members engage in industrial action interfering with trade or commerce or the provision of any public service (section 294), the practical effect of which would be to prohibit strikes in such circumstances. The Committee recalls that prohibiting industrial action that is threatening to cause significant damage to the economy goes beyond the definition of essential services accepted by the Committee, namely, those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Survey, op. cit., paragraph 159), as does the reference in the context of cancellation to industrial action affecting trade, commerce or the provision of a public service. Regarding the provision of public services, the Committee recalls that the prohibition on the right to strike in the public service should be limited to public servants exercising authority in the name of the State (see General Survey, op. cit., paragraph 158).

The Committee hopes that the Government will indicate in its next report measures taken or envisaged to amend the provisions of the Workplace Relations Act referred to above, to bring the legislation into conformity with the requirements of the Convention.

Trade Practices Act, 1974

Secondary boycotts. The Committee notes that it has raised questions and concerns regarding certain provisions of this Act for a number of years, and that these provisions have been amended by Schedule 18 of the Workplace Relations and Other Legislation Amendment Act, 1997. On the practical application of sections 45D and 45DB, the Government states that since the new provisions came into effect in January 1997, 11 applications have been made, four of which were discontinued, two dismissed at preliminary stages, and the others have not been completed. The Federal Court has not granted any final injunctions or made any orders in relation to penalties or damages. The Government states that the Act prohibits certain forms of boycott conduct; however, an exemption is made where the dominant purpose is related to the pay, conditions of employment, hours of work or working conditions of the employees taking the action or of other employees of the same employer (section 45DD).

The Committee notes that section 45D, as amended (section 45D, 45DA, 45DB), continues to render unlawful a wide range of boycott activity directed against persons who are not the employers of the boycotters. Breach of this provision may be sanctioned by one or more of the following: (i) a pecuniary penalty — for a violation of sections 45D or 45DB, up to a maximum of A$750,000 for a trade union and A$500,000 for a person; for a violation of 45DA, up to a maximum of A$10,000,000 for a trade union and A$500,000 for a person (section 76); (ii) injunctions (section 80); and (iii) damages, with no upper limit as to quantum (section 82). The Committee notes with regret that the recent amendments to the Act maintain the boycott prohibitions and render unlawful a wide range of sympathy action. The Committee again recalls that a general prohibition on sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is lawful. With respect to the elevated penalties that may be imposed under the Act, the Committee recalls that (a) sanctions should only be imposed where there are violations of strike prohibitions or restrictions that are in conformity with the principles of freedom of association; and (b) sanctions should not be disproportionate to the seriousness of the violation (see General Survey, op. cit., paragraphs 177-178). The Committee expresses the firm hope that the Government will amend the legislation accordingly, and will continue to provide information as to the practical application of the boycott provisions of the Act.

Crimes Act, 1914

Restrictions on strikes and boycotts beyond essential services. The Committee recalls its previous comments, requesting the Government to keep it informed of any progress made in repealing the provisions of the Act banning strikes in services where the Governor-General has proclaimed the existence of a serious industrial dispute "prejudicing or threatening trade or commerce with other countries or among the States" (section 30J), and prohibiting boycotts resulting in the obstruction or hindrance of the performance of services by the Australian Government or the transport of goods or persons in international trade (section 30K). The Government states that it is considering the Committee's request, but that no further measures have been taken in respect to these provisions at this stage.

It also states that no action has been taken under the relevant provisions for 40 years. The Committee takes due note of this information, and requests the Government to repeal these provisions to bring the legislation into conformity with the Convention and the national practice.

The Committee is also addressing certain matters directly to the Government concerning the Workplace Relations Act, 1996, and the Trade Practices Act, 1974.

State jurisdiction

The Committee notes that pursuant to the Northern Territory (Self Government) Act, 1978 and the Victorian Commonwealth Powers (Industrial Relations) Act, 1996, the Federal Workplace Relations Act, 1996, is the principal legislation applying in the Northern Territory and Victoria. With respect to the State of Queensland, the Committee notes that a number of provisions of the Queensland Workplace Relations Act, 1997, are closely based on those found in the Federal Workplace Relations Act, 1996. The Committee refers, in particular, to the provisions found in the Queensland Act in Chapter 2, Part 1, concerning certified agreements and protected industrial action, Chapter 6 on industrial disputes, and Chapter 7, Part 2, concerning the Industrial Relations Commission. The Committee notes further the similarities between section 187 of the Queensland Industrial Organizations Act, 1997, and section 294 of the Federal Workplace Relations Act, 1996. Concerning South Australia, the Committee notes that pursuant to section 222 of the Industrial Employee Relations Act, 1994, the secondary boycott provisions of the Federal Workplace Relations Act, 1996, are applied as laws of the State. The Committee requests the Government to take measures to have the state legislation referred to above examined and amended in the light of the corresponding comments concerning the Federal Workplace Relations Act, 1996.

The Committee is addressing a request directly to the Government concerning a number of aspects of the Industrial Relations Act of Western Australia, as recently amended, in particular concerning the right of workers to establish and join organizations of their own choosing, interference in the internal affairs of organizations, and limitations on legitimate strike activities. Requests have also been addressed to the Government concerning the Industrial Relations Act, 1996, of New South Wales, and the Workplace Relations Act, 1997, and the Industrial Organizations Act, 1997, of Queensland.

Austria (ratification: 1950)

The Committee takes note of the information supplied by the Government in its report.

Article 3 of the Convention. Right of workers' organizations to elect their representatives in full freedom. With reference to its previous comments concerning the need to amend the legislation in order to enable foreign workers to be eligible for election to work councils, the Committee notes the Government's statement in its latest report that it was endeavouring to introduce an amendment to this effect in the next draft bill. The Government also indicated that the negotiations between the social partners concerning major amendments to the Works Constitution Act had resumed after informal talks between workers and employers in spring 1998. During these negotiations, the question of eligibility of foreign workers for office in the representative organizations was again submitted for discussion. While noting this information, the Committee urges once again the Government to indicate in its next report any concrete measures taken regarding the right of foreign workers to be eligible, at least for a reasonable proportion of posts, for election to work councils.

Azerbaijan (ratification: 1992)

The Committee notes the information supplied by the Government in its reports of February and October 1998 in response to its previous comments.

In its previous observation, the Committee had noted that the legislation grants trade unions the right to strike in accordance with the legislation in force. However it had noted the Government's indication to the effect that the Penal Code in force, section 188-3, governs participation in collective activities creating a public disturbance. The Committee had noted that this provision contains important restrictions on the right of workers to participate in collective action aimed at disturbing transport operations, state and public institutions and undertakings, combined with severe sanctions, including sentences of imprisonment for up to three years. The Committee had recalled that the right to strike is an intrinsic corollary of the right to organize protected by the Convention. It had considered that restrictions or prohibitions on the right to strike should be limited to public servants exercising authority in the name of the State or in essential services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. It had requested the Government to amend or repeal this provision where it could apply to strikes in public transport or state or public institutions or undertakings which are not essential services within the strict meaning of the terms.

The Committee notes from the Government's report received in December 1997 that under article 36 of the Constitution of November 1995 everyone has the right to strike, and that strikes are temporarily regulated by the USSR Act concerning procedure for the settlement of collective labour disputes of May 1991 which has remained in force, while a new Act concerning collective labour disputes is currently being prepared.

The Government explains that, in accordance with section 12 of the Act in force, strikes are not permitted in cases where this creates a threat to people's lives and health, as well as in railway enterprises or municipal transport including the metro, in civil aviation, communications, power production, defence-related industries and enterprises, state bodies, organizations for the enforcement of law and order and the maintaining of national security, and enterprises engaged in continuous operations, the halting of which might entail serious and hazardous consequences. The Government adds that the participation in a legal strike, in accordance with section 13 of the Act, shall not be considered a breach of labour discipline and cannot entail the application of disciplinary or other measures provided for by law. As a result, the Government believes that the participants in strikes are sufficiently protected from the possibility of article 188-3 of the Criminal Code being applied to them.

While noting these explanations, the Committee notes that under the Act of 1991 (section 12), strikes are forbidden in a number of enterprises and organizations which are not essential services in the strict sense of the term and in particular in railway enterprises, municipal transport including the metro and civil aviation, communications and power production. The Committee observes moreover that nothing in the law prevents article 188-3 of the Criminal Code from being applied to strikes particularly in the transport sector, and in state and public institutions and undertakings.

In its latest report received by the Office on 6 October 1998, the Government explains that a new Act on the Settlement of Collective Labour Disputes was adopted on 15 May 1998. Section 22 of the Act prohibits strikes in certain services related to security, health and life support, such as hospitals, power and water supply, communication, air control services and fire services. Certain provisions of previous legislation are no longer in force.

The Committee notes this information with interest. It will examine the contents of the new law once it is translated. However, the Committee again requests the Government to amend or repeal article 188-3 of the Criminal Code so that it would not be applied to strikes in non-essential services.

In its previous comments the Committee had also noted that, pursuant to section 6(1) of the Trade Union Act No. 792 of 24 February 1994, trade unions are prohibited from engaging in political activity, associating with political parties or carrying out joint activities with them and providing assistance or donations to political parties or receiving assistance or donations from them. The Committee had indicated that while being aware of the political problems which the country had faced, it considered that the wholesale prohibition to engage in political activities imposed on trade unions was not in conformity with the right of workers' organizations to organize their activities and programmes in full freedom. It had requested the Government to take measures to lift the total ban on political activities of trade unions.

In its report of February 1998, the Government states that, in accordance with current legislation, trade union members just like other persons are entitled to join political parties and that through the membership in the appropriate parties, trade union members can take part in political activities.

While taking note of this statement, the Committee must point out that in its General Survey on freedom of association and collective bargaining in 1994 it had noted with satisfaction the abolition of the legislative provision that had established a close relationship between trade union organizations and the single political party in power and the introduction of the autonomy and independence of trade unions now enshrined in the legislation of many countries. It had regretted, however, the imposition in some countries of a total ban on any political activities by trade unions and it had recalled that during the preparatory work on Convention No. 87 it had been stated that trade union activities cannot be restricted solely to occupational matters, since a government's choice of a general policy is bound to have an impact on workers' remuneration, working conditions, functioning of enterprises and social security. The Committee considers that the development of the trade union movement and its role as a social partner means that workers' organizations must be able to voice their opinions on political issues and especially on a government's economic and social policy. But it recalls that the 1952 resolution of the International Labour Conference concerning the independence of the trade union movement remains valid and that when trade unions decide to establish relations with political parties as a means towards the advancement of their economic and social objectives, such political relations should not be of such a nature as to compromise the continuance of the trade union movement irrespective of political changes in the country (see paragraphs 130 to 133 of the General Survey). The Committee therefore once again urges the Government to amend its legislation so as to lift the ban on any political activity by trade unions and to allow a reasonable balance between the legitimate interests of organizations in expressing their point of view on matters of economic and social policy affecting their members and workers in general, on the one hand, and the separation of political activities in the strict sense of the term and trade union activities on the other hand.

The Committee hopes that the Government will make every effort to take the necessary measures to bring its legislation and its practice into full conformity with the provisions of the Convention and requests the Government to indicate the progress made on these issues.

Bangladesh (ratification: 1972)

The Committee notes the information provided in the Government's report, and the statement made by the Government representative to the 1998 Conference Committee and the discussion that followed. The Committee also takes note of the conclusions of the Committee on Freedom of Association in Case No. 1862 (306th Report, 308th Report and 311th Report).

The Committee recalls that it has been commenting for a number of years concerning the following discrepancies between the national legislation and the provisions of the Convention:

- the exclusion of managerial and administrative employees from the right of association under the Industrial Relations Ordinance, 1969 (IRO);
- restrictions on the right of association of public servants;
- restrictions regarding holding trade union office;
- excessive external supervision of the internal affairs of trade unions;
- the "30 per cent" requirement for initial or continued registration as a trade union;
- denial of the right to organize of workers in export processing zones;
- restrictions on the right to strike.

In addition, the Committee notes that the Committee on Freedom of Association has brought to its attention, in the context of Case No. 1862, the inability to register a trade union on a nationwide basis or a union comprising workers from different establishments owned by different employers (see 306th Report, paragraph 103).

Managerial and administrative functions

In its previous observations, the Committee has commented on the exclusion from the definition of "worker" of persons carrying out managerial or administrative functions, thus denying them the right of association set out in section 3(a) of the IRO. In its last observation, the Committee noted the two main public sector associations referred to by the Government that had been established for these workers, and requested the Government to provide specific information on the number and size of other such associations, including those in the private sector. The Committee also requested the Government to specify which legislative provision grants the right of association to persons carrying out managerial and administrative functions in the private sector.

The Committee notes the Government's statement to the Conference Committee that while these workers cannot form trade unions under the IRO, they are able to form associations for the advancement of their rights and interests by virtue of article 38 of the Constitution of Bangladesh, which gives every citizen the right to form an association or union subject to reasonable restrictions imposed by law in the interests of morality and public order. In its latest report, the Government states that there is no legal bar for managerial or administrative personnel in the private sector, and points to the fact that various banking and insurance companies have officers' welfare associations to promote their service interests. The Government also lists a number of public sector associations, and states that in addition there are officers' welfare associations in the public sector, but that information as to their number and size is not currently available.

The Committee takes note of the Government's reference to article 38 of the Constitution, and requests the Government to provide further information as to the substance of the right to associate under the Constitution, including how the restrictions foreseen thereunder have been applied, and the recourse available to workers where a violation of this constitutional right is alleged. As article 38 of the Constitution only applies to "citizens", the Committee requests the Government to specify how non-citizens carrying out managerial or administrative functions are able to exercise the right of association. The Committee also looks forward to receiving information on the number and size of the associations, private and public sector, that have been established to further the occupational interests of those carrying out managerial and administrative functions.

Right of association of public servants

The Committee notes that the Government continues to assert that the legislation with respect to public servants is in conformity with the Convention. According to the statement of the Government representative to the Conference Committee, even though public servants are not covered by the IRO, they do have the right to form associations to advance their interests due to the constitutional right to associate referred to above. The Committee notes further that the Government states that matters concerning the exclusion of workers at the Security Printing Press from trade unions are to be placed before the Review Committee now reviewing the draft Labour Code. The Committee notes that the Government has been making this comment for a number of years, and expresses the firm hope that the necessary measures will be taken without further delay to ensure that all workers, without distinction whatsoever, are guaranteed the right to organize, and requests the Government to indicate any progress made in this regard.

The Committee has also raised concerns with respect to the Government Servants (Conduct) Rules, 1979, restricting the right of public servants to issue publications. The Government replies in this context that public servants can publish any research based on culture, sports, development works and scientific matters in any newspaper or journal without prior approval; they can also publish any other matter with prior approval of the authority, pursuant to Rules 21 and 22 of the Government Servants (Conduct) Rules. The Committee notes that an extremely limited range of matters may be the subject-matter of publications by public servants, which does not include basic trade union issues, and as such does not allow for a free flow of information, opinions and ideas.

The Committee again recalls that the measures which impose prior restraint on the subject-matter of trade union publications are contrary to the right of workers' organizations to organize their administration and activities and to formulate their programmes without interference from public authorities, and requests the Government to take measures to amend the above-noted rules accordingly.

Restrictions regarding holding trade union office

In its previous comments, the Committee has drawn attention to legislative provisions that excessively restrict the right of workers' organizations to elect their representatives in full freedom. In particular, the Committee noted that section 7-A(1)(b) of the IRO prevents persons who are not current or former employees of an establishment or group of establishments from becoming members or officers of a trade union in such an establishment or group of establishments. In addition, section 3 of Act No. 22 of 1990 provides that a worker dismissed for misconduct shall not be entitled to become an officer of a trade union.

The Government representative to the Conference Committee stated that a worker dismissed for misconduct might seek revenge against the management, which could hinder normal union activities, industrial peace and productivity. In its report, the Government contends that the relevant provisions do not need to be amended. The Committee must again point out that such legislation entails the risk of interference by the employer through the dismissal of trade union members or leaders for exercising legitimate trade union activities, with the result (or even the intention) of depriving them in future of holding a position as a trade union officer. The Committee remains of the view that section 7-A(1)(b) of the IRO and section 3 of the 1990 Act are contrary to the right of workers' organizations to elect their representatives in full freedom, and urges the Government to take measures to have the provisions amended to bring them into conformity with the Convention. The Committee reminds the Government in the context of section 7-A(1)(b), that it does not object to an occupational requirement being imposed for some of the officers of an organization, as long as a reasonable proportion are exempted from such requirement.

Excessive external supervision

The Committee has previously commented that the powers of the Registrar of Trade Unions to enter trade union premises, inspect documents, etc., under Rule 10 of the Industrial Relations Rules, 1977, is not subject to judicial review. The Government states in its report that the powers of the Registrar to inspect documents are exercised in order to ensure that the rules of the organization and the relevant provisions of the labour laws are observed, and to provide adequate safeguards with respect to trade union funds. The Government states that the law provides that the Registrar under section 10(2) of the IRO is to obtain prior permission from the Labour Court before taking any penal action against unions for contravention of any provisions of the laws. The Government concludes that "it is evident that the powers of supervision of the [Registrar] are clearly under judicial review". The Committee regrets that, while it has previously requested the Government to indicate the provisions that subject such powers of supervision to judicial review, the Government has failed to do so, referring only to section 10(2) of the IRO which provides that the Registrar is to submit an application to the Labour Court for permission to cancel the registration of a trade union. The Committee notes that the provision referred to by the Government in no way limits the Registrar's powers to enter premises and inspect documents and does not subject the substance and procedure of the Registrar's verifications to review by an impartial judicial authority. Noting again that there does not appear to be any limits on the Registrar's powers under Rule 10 to enter trade union premises and inspect documents, etc., and that this power is not subject to judicial review, the Committee asks the Government to amend this provision to bring it into conformity with the Convention.

Registration requirements

The Committee recalls that it has been commenting for several years on the lack of conformity with *Article 2 of the Convention* of provisions of the IRO imposing a requirement for initial and continued registration that a trade union have a minimum membership of 30 per cent of the total number of workers employed in the establishment or group of establishments in which it is formed (sections 7(2) and 10(1)(g)). Furthermore, the non-conformity of these provisions with the Convention was also raised by the Committee on Freedom of Association (see Case No. 1862, 306th Report, paragraph 102). The Committee also notes that the Committee on Freedom of Association has raised other related concerns, namely that there is no legal provision enabling the registration of a trade union on a nationwide basis and that, pursuant to a court decision, registration of a union comprising workers from different establishments owned by different employers is prohibited (see 306th Report, paragraph 103). The Committee notes in this regard that the right of workers to form organizations of their own choosing implies the free determination of the structure and composition of trade unions.

The Government again asserts that sections 7(2) and 10(1)(g) are in conformity with the Convention, and states that the requirement "has checked the multiplicity of trade unions which is obviously counterproductive for the workers". The Committee notes, however, that, according to the statement of the Government representative to the Conference Committee, the Government was considering taking measures in the near future concerning these provisions. The Committee expresses the firm hope that the necessary measures will be taken in the near future to ensure that the registration provisions are brought into conformity with *Article 2* of the Convention.

Export processing zones

The Committee notes that the amendments proposed by the National Labour Law Commission (NLLC), referred to in a previous government report, to extend the provisions of the IRO and related laws to workers in export processing zones not only have not been adopted, but it appears from the Government's latest report that the issue has been resubmitted to a different body for consideration, namely the Review Committee on the Draft Labour Code. The Government also states in its report that the restrictions on the formation of trade unions in export processing zones "are temporary measures necessitated by the national situation, the level of development and the specific circumstances within Bangladesh". The Committee notes that such a fundamental right as the right to organize should not be denied to workers, even temporarily, and that this would constitute a violation of *Article 2* of the Convention. In any event, the Committee is of the view that the Export Processing Zones Authority Act which provides for the exemption of the zones from the operation of the IRO, cannot be considered a "temporary measure", in view of the fact that it was adopted in 1980. Due to the seriousness of the violation of such an important right, the Committee urges the Government to take measures without further delay to ensure that workers in export processing zones are entitled to exercise all the rights under the Convention.

Restrictions on the right to strike

In its previous comments, the Committee has repeatedly raised concerns with respect to several provisions of the IRO limiting the right to strike and other forms of industrial action, in violation of the principles of freedom of association. The Committee has commented in particular on the following provisions: (i) the necessity for three-quarters of the members of a workers' organization to consent to a strike (section 28); (ii) the possibility of prohibiting strikes lasting more than 30 days (section 32(2)) and of prohibiting a strike at any time if it is considered prejudicial to the national interest (section 32(4)) or involves a public utility service (section 33(1)); and (iii) the nature of the penalties that may be imposed in respect of participation in unlawful industrial action (sections 57 to 59), including imprisonment. The Committee notes the statement made by the Government representative to the Conference Committee to the effect that the provisions noted above have been examined by the National Labour Law Commission whose report was still being studied by the Government. The Committee notes with interest the further statement of the Government representative that the Government would welcome the technical assistance of the International Labour Office concerning the implementation of the Convention.

The Committee notes the Government's statement that the powers of prohibiting a strike are exercised only in circumstances of national crisis, in conformity with the justification permitted by the Committee. The Committee notes that, while restrictions on strikes may at present only be imposed in circumstances of national crisis, the legislative provisions allow for restrictions to be imposed extending far beyond such circumstances;

thus the provisions should be amended accordingly to bring them in line with the requirements of the Convention. The Committee recalls that, while the Committee is of the view that strikes can be restricted in the case of an acute national crisis, this must be limited to a genuine crisis situation, such as those arising from a serious conflict, insurrection or natural disaster, and any such restriction should be imposed only for a limited period and to the extent necessary to meet the requirements of the situation (see General Survey on freedom of association and collective bargaining, 1994, paragraph 152). The Committee, therefore, asks the Government to take the necessary measures to have the legislation amended to ensure that restrictions on the right to strike are confined accordingly.

The Committee notes with regret that no progress has been made by the Government in attempting to bring its legislation into fuller conformity with the requirements of the Convention, and that the Government continues to assert that the legislation does not violate the Convention, despite the repeated comments of the Committee to the contrary. In addition, according to information received by the ILO, it seems that trade union activities in the banking sector have been suspended since January 1998. Furthermore, several applications for registration by trade unions in the textile, metal and garment sector were rejected on unjustified grounds. In this respect, the Committee requests the Government to provide information in its next report concerning these serious allegations.

The Committee asks the Government to review and amend the legislation referred to above, taking into account the Committee's comments, and to inform it of any progress made in this regard. The Committee expresses the firm hope that the Government, having stated that it would welcome ILO technical assistance concerning the implementation of the Convention, will indeed accept such assistance in the near future.

The Committee is also addressing a request directly to the Government.

Barbados (ratification: 1967)

The Committee notes the information provided in the Government's report.

The Committee notes with concern that for 15 years it has been commenting on section 4 of the Better Security Act, 1920, which provides that any person who wilfully breaks a contract of service or hiring, knowing that this may endanger real or personal property, is liable to a fine or up to three months' imprisonment, and that the Government in its report again informs the Committee that the Act has not yet been amended. The Committee again recalls that if this provision is applicable in the case of a strike, it should be amended so that such penalties may only be imposed with respect to essential services in the strict sense of the term, namely those services the interruption of which would endanger the life, personal health or safety of the whole or part of the population, and that the sanctions should not be disproportionate to the seriousness of the violation. The Committee, therefore, urges the Government to amend the legislation to bring it into conformity with the principles of freedom of association, and requests it to inform the Committee of any measures taken in this regard, and to state whether this provision has been invoked in recent years.

The Committee also notes the statement in the Government's report that draft legislation regarding trade union recognition is currently under review. The Committee requests the Government to forward it a copy of this draft legislation and to keep it informed of the various stages in the adoption process that it has passed.

Belarus (ratification: 1956)

The Committee notes the information provided in the Government's latest reports and the examination by the Committee on Freedom of Association of Case No. 1849 (311th Report, November 1998).

1. *Right of workers' organizations not to be suspended by administrative authority.* In its previous comments, the Committee noted the suspension by administrative decision (Presidential Decree No. 336) of the Free Trade Unions of Belarus (FTUB) following a strike in the transport sector and expressed the firm hope that the necessary measures would be taken to revoke this Decree so as to enable the Free Trade Unions of Belarus to carry out their trade union activities once again.

Referring to its previous comments, the Committee now notes with satisfaction from the Government's report that paragraph 1 of the Presidential Decree which suspended the operation of the FTUB was repealed by Presidential Decree No. 657 of 29 December 1997. It further notes with interest that the FTUB has been registered and is functioning and that a representative of the Democratic Trade Union of Transport Workers has been appointed to the National Labour and Social Council.

2. *Right of workers' organizations to organize their activities in full freedom.* In its previous comments, the Committee urged the Government to amend Order No. 158 of 28 March 1995, which established a list of essential services in which strikes were prohibited, in order to ensure that workers' organizations in the transport sector unequivocally enjoyed the right to strike for the defence of their economic, social and occupational interests. The Committee notes with interest from the Government's latest reports that the Bill to amend and supplement the Act respecting the procedure for the settlement of collective labour disputes would repeal section 16 of the Act which established a list of sectors, organizations and enterprises where strike action was prohibited and upon which Order No. 158 was based.

The Committee now understands that this Bill has been passed by Parliament and will become law as soon as it has been signed by the President. It expresses the firm hope that this amending Act will enter into force shortly and that it will ensure full conformity with the Convention. It requests the Government to indicate in its next report the progress made in this regard and to transmit a copy of the final version of the Bill which was passed by Parliament.

3. *Right of workers and employers to establish organizations without previous authorization; 1994 Act on Social Associations.* The Committee notes that the Government's report refers on numerous occasions to the Law on Social Associations and its impact on the application of the Convention. Indeed, the Committee further notes that section 3 of the 1992 Trade Union Act provides that the constitutions and by-laws of trade unions shall be registered in the manner established by the Acts governing social organizations. However, it would appear from section 1, paragraph 2 of the Act on Social Associations that trade unions are not covered by its scope. Given that this contradiction in law could easily give rise to difficulties in respect of the applicable rules for trade union registration, the Committee would request the Government to indicate the measures taken or envisaged to eliminate this contradiction so as to ensure that workers' and employers' organizations are established, subject only to the rules of the regulations concerned, without previous authorization.

The Committee is also addressing a request directly to the Government.

Belgium (ratification: 1951)

The Committee notes with interest the detailed information contained in the Government's report.

The Committee recalls that it has been commenting for many years on the need to ensure by law that objective, pre-established and detailed criteria are adopted in establishing rules for the access of professional and workers' organizations to the National Labour Council and that, in this respect, the Organic Act of 29 May 1952 instituting the National Labour Council still contains no specific criteria on representativeness but leaves discretionary power to the Government. The Committee notes the information in response to the question of establishing rules for the access of the social partners to the Labour Council and the explanations provided by the Government to the effect that social dialogue is taking place within a particularly difficult context since the National Labour Council constitutes only one of the component parts of the much wider ensemble within which social partnerships develop. Nevertheless, the Committee firmly hopes that the Government will shortly adopt the legal provisions laying down the criteria on representativeness and requests the Government to indicate in its next report any progress achieved in this respect.

Belize (ratification: 1983)

The Committee notes the information contained in the Government's last report.

In its previous comments, the Committee had recalled the need to amend the Settlement of Disputes (Essential Services) Act, as amended by Act No. 32 of 28 April 1994, which provides a list of services where the right to strike is prohibited. The Committee considers, in the same way as the Committee on Freedom of Association in its conclusions in Case No. 1775 (295th Report, paragraphs 502-518, approved by the Governing Body in November 1994), that certain of the services included in this list (such as the postal, monetary, financial and transport services and services in which petroleum products are sold) go beyond the strict sense of essential services, that is those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population; it therefore requests the Government to amend the list of essential services accordingly.

In its previous report, the Government had again indicated that discussions were under way regarding the amendment of the list of essential services and that it would inform the ILO of progress made in this regard. The Committee expresses the firm hope that the list of essential services will be amended in the near future so that the prohibition on the right to strike is restricted to essential services in the strict sense of the term and to public servants exercising authority in the name of the State. The Committee again requests the Government to provide a copy of the amendments made to bring the legislation into full conformity with the principles of freedom of association as rapidly as possible.

Benin (ratification: 1960)

The Committee takes note of the information provided by the Government in its report concerning the new Labour Code in its amended form of 27 January 1998 (Act No. 98-004), and of the Bill concerning the right to strike.

With reference to its earlier comments on the need to amend legislation under which personnel in public or private enterprises, organizations and establishments whose operation is necessary to the life of the nation may be deprived of the right to strike when the interruption of their service would harm the economy and the higher interests of the nation (section 8 of Ordinance No. 69-14 PR/MFPTRA), the Committee notes with interest that, under the terms of sections 1, 2 and 13 of the Bill concerning the exercise of the right to strike, civil servants, like other workers, have the right to strike and to bargain collectively. The Committee notes that the Bill in question conforms to the principles of freedom of association with regard to the minimum service to be maintained in the event that a strike in strategic sectors would endanger the health or the safety of the whole or part of the population, and provides for the repeal of Ordinance No. 69-14 PR/MFPTRA of June 1969, on which the Committee wishes to make the following comments.

1. *The right to establish trade unions without previous authorization (Article 2 of the Convention).* The Committee notes that the new Labour Code of 1998 still contains a provision which contravenes the principles of freedom of association. Section 83 stipulates that, in order to obtain legal recognition, trade union statutes must be deposited with the competent authorities, including the Ministry of the Interior, under penalty of a fine, a provision which the Committee views with some concern. Making the deposition of a trade union's statutes with the Ministry of the Interior, on penalty of severe sanctions, a condition for the legal existence of that union may constitute an obstacle to the creation of trade unions. In this respect, the Committee recalls that under the terms of *Article 2*, workers and employers must have the right to establish organizations of their choice without previous authorization.

2. *The right of workers without distinction whatsoever to establish and join trade unions (Article 2).* The Committee notes that section 2 of the Labour Code excludes seafarers from its application and stipulates that they are covered by the 1968 Merchant Marine Code. Noting that the Merchant Marine Code (Ordinance No. 38 PR/MTPTPT of June 1968) does not grant seafarers the right to organize or the right to strike, which is an intrinsic corollary of the right to organize, but does provide for sentences of imprisonment for breaches of labour discipline (sections 209, 211 and 215), the Committee asks the Government to ensure that seafarers are granted the protection of the Convention.

The Committee asks the Government to indicate in its next report the measures taken or planned to amend the Labour Code in order to avoid making the deposition of trade union statutes with the Ministry of the Interior, under penalty of a fine, a condition for the establishment of the union. The Committee also requests the Government to keep it informed with regard to the definitive adoption of the Bill concerning the right to strike and of any measures taken or planned to extend the right to organize to seafarers.

Finally, the Committee is addressing a request directly to the Government.

Bolivia (ratification: 1965)

The Committee notes the information provided by the Government in its reports as well as the statement made by the Minister of Labour of Bolivia and the discussions which took place during the 1998 Conference Committee on the Application of Standards.

The Committee recalls that the comments which it has been making for several years in respect of the following points were examined during the direct contacts mission in October 1997:

(1) the exclusion of agricultural workers from the scope of the General Labour Act (section 1 of the General Labour Act and its Regulation);

(2) the denial of the right to trade union rights for public servants (section 104 of the General Labour Act);

(3) the impossibility of establishing more than one trade union in an enterprise (section 103 of the General Labour Act);

(4) the wide powers of supervision conferred on the labour inspectorate over trade union activities (section 101 of the General Labour Act);

(5) the fulfilment of certain requirements for eligibility to trade union office (section 138 of the Regulation of the General Labour Act stipulates the requirement of Bolivian nationality and sections 6(c) and 7 of the Legislative Decree of June 1951 stipulate the requirement of permanent employment in the enterprise);

(6) the possible dissolution of trade union organizations by administrative decision (section 129 of the Regulation of the General Labour Act of 1943);

(7) the imposition of certain restrictions in respect of the right to strike (a majority of three-quarters of the workers of the enterprise to call a strike (section 114 of the Act and section 159 of the Regulation)); the unlawful nature of general and sympathy strikes which are liable to penal sanctions (sections 1 and 2 of Legislative Decree No. 02565 of 1951); the unlawful nature of strikes in banks (section 1(c) of the Supreme Decree No. 1959 of 1950) and the recourse to compulsory arbitration by decision of the Executive Power to put an end to a strike (section 113 of the General Labour Act);

(8) the lack of provisions to protect workers who are not trade union leaders against anti-union discrimination;

(9) the lack of provisions to protect against any act of interference by employers' organizations in workers' organizations and vice versa;

(10) the need to promote and develop collective bargaining to ensure that collective bargaining is not restricted to fixing wage rates but is, in practice, extended to other conditions of employment.

In respect of section 1 of the General Labour Act and its Regulation, the Committee notes that, in accordance with the Minister of Labour's statement, section 4 of Act No. 1715 respecting the National Institute of Agricultural Reforms, of 18 December 1996, provides for wage-earning agricultural workers to be included in the scope of the General Labour Act. In this respect, the Committee requests the Government to provide a copy of the text in question and to inform it whether this category of workers may negotiate their conditions of employment through collective bargaining and whether they may go on strike.

The Committee considers that self-employed rural workers should also enjoy the right to organize to defend their occupational interests and requests the Government to adopt the necessary measures in this respect.

The Committee also notes with interest the Minister of Labour's statement to the effect that the Social Dialogue Programme is being pursued by a tripartite Committee with a view to amending the national legislation and that the essential questions raised by the Committee which have obtained tripartite consensus shall be amended by Decrees issued by the Executive Power. In this respect, the Minister of Labour confirms the agreement in respect of the amendments to the following questions, for which a tripartite consensus had already been reached during the direct contacts mission, namely:

- section 101 of the General Labour Act which confers wide powers of supervision of the labour inspectorate over trade union activities;

- section 129 of the Regulation of the General Labour Act of 1943 respecting the possible dissolution of trade union organizations by administrative decision;
- the inclusion of provisions to protect workers who are not trade union leaders against acts of anti-union discrimination and against any acts of interference by employers' organizations in worker' organizations and vice versa.

The Committee takes due note of the Minister of Labour's statement to the effect that the Government has neither imposed nor allowed the imposition of penal sanctions in the event of general or sympathy strikes (section 2 of Legislative Decree No. 02565 of 1951). Nevertheless the Committee notes that this Legislative Decree, as well as section 234 of the Penal Code (which also lays down sanctions for unlawful strikes), which imposes sanctions such as prison sentences of one to five years and fines of 100 to 500 dias, remain in force.

In respect of the above comments, the Committee takes due note that the Minister of Labour has expressed a commitment to ensure the amendment of all of the provisions which are not in conformity with the Convention, which shall be examined within the framework of the Social Dialogue Programme with a view to reaching a consensus, and for these provisions to be incorporated in the text of the new General Labour Act.

The Committee expresses the firm hope that the Government will provide information in its next report in respect of the measures adopted to amend the national legislation as indicated during the direct contacts mission and confirmed by the Minister of Labour.

[The Government is asked to report in detail in 1999.]

Bosnia and Herzegovina (ratification: 1993)

The Committee notes with satisfaction the provisions of the Constitution of 13 March 1994 which in article 2(1)(l) guarantees freedom of association and the right of all persons within the territory of the Federation to form and belong to trade unions.

The Committee requests the Government to provide detailed information in reply to the questions raised in the report form concerning the application of this fundamental Convention. The Committee also requests the Government to provide with its report the text in force of the Labour Code and Penal Code and of the text governing freedom of association, the right to organize, the settlement of collective disputes and the right to strike.

[The Government is asked to report in detail in 1999.]

Bulgaria (ratification: 1959)

The Committee notes the information provided in the Government's latest report as well as the comments of the Confederation of the Independent Trade Unions in Bulgaria.

Article 3 of the Convention. In its previous comments, the Committee recalled the need to take steps to amend section 11(2) of the Act of March 1990 regarding the settlement of collective labour disputes, which provides that a decision to call a strike must be taken by a majority of all the workers in the respective enterprise or unit. While noting the Government's reply which states that the provisions of the Act are liberal in character and any attempt to amend it may infringe its democratic approach, the Committee recalls once again that it considers that account should only be taken of the votes cast and that the required quorum and majority should be fixed at a reasonable level (see 1994 General Survey on freedom of association and collective bargaining, paragraph 170). In this regard, the Committee requests the Government to take the necessary measures to amend section 11(2) of the Collective Labour Disputes Act of 1990 in order to bring it into closer conformity with the principles of freedom of association contained in the Convention.

Concerning the prohibition for workers from the energy, communications and health sectors to go on strike, the Committee notes the Government's statement that if the demands of these workers are not granted, they may go on strike by wearing or placing suitable signs or symbols but they are not allowed to leave work and must continue working during the strike. In this regard, the Committee recalls the need to ensure that workers in the health, electricity and communication sectors who are forbidden from exercising the right to strike (section 16(4) of the Act), which is an essential means of defending their occupational interests, should enjoy compensatory guarantees to protect their social, economic and professional interests. For example, conciliation and mediation procedures leading, in the event of a deadlock, to arbitration machinery seen to be reliable by the parties concerned should be adopted. In this regard, it is essential that workers are able to participate in determining and implementing the procedure, which should provide sufficient guarantees of impartiality and rapidity. In addition, the arbitration awards should be binding on both parties and once issued should be implemented rapidly and completely.

The Committee also notes the Government's statement that it is in regular contact with the trade unions and the employers and also notes the new developments made in the field of peaceful settlement of collective disputes. On this issue, the Committee requests the Government to indicate in its next report whether amendments to the Labour Code and the Collective Labour Disputes Act taking into account these new developments are being prepared.

Burkina Faso (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> Recalling that its previous comments concerned the need to repeal the provisions requiring public servants to respect the revolutionary order under penalty of disciplinary sanctions set out in Zatu No. AN VI-008/FP/TRAV of 26 October 1988 establishing the general conditions of service of the public service (sections 6, 7, 9, 36 and 46), the Committee notes the Government's statement to the effect that the revision of the general conditions of service of the public service has not yet taken effect but that, as soon as it has, the comment on the need to repeal the above-mentioned provisions will be taken into account in the new text. Despite the Government's statements, the Committee nevertheless expresses its concern that the provisions in question are still in force and that the possibility of disciplinary sanctions still exists. It therefore asks the Government once again to repeal or amend these provisions which are contrary to *Article 3 of the Convention*.
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> Furthermore, the Committee draws the Government's attention to sections 1 and 6 of Act No. 45-60/AN of 25 July 1960 regulating the right to strike of civil servants and state officials regarding the Government's right to requisition in the event of a strike by civil servants. The Committee considers it necessary to restrict the public authorities' powers of requisition to cases in which the right to strike can be limited or prohibited, namely to services whose interruption would endanger the life, personal safety or health of the whole or part of the population, or in a situation of acute national crisis (see paragraphs 152 and 159 of the 1994 General Survey on freedom of association and collective bargaining).
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> The Committee requests the Government to keep it informed in its next report of any change in the situation, either in law or in practice and, in particular, to indicate the measures taken to repeal or amend sections 6, 7, 9, 36 and 46 of the general conditions of service of the public service of 26 October 1988 and sections 1 and 6 of Act No. 45-60/AN of 25 July 1960 governing the right to strike of civil servants and state officials, and to supply it with the

new text on the revision of the general conditions of service of the public service to enable it to examine its conformity with the requirements of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Burundi (ratification: 1993)

The Committee regrets to note that for the fourth year in succession it has not received the first report from the Government. The Committee nevertheless notes the Constitution of 13 March 1992 and the Labour Code of July 1993.

The Committee notes with interest that the Constitution of 1992 grants freedom of association and the right to organize peacefully (section 28) and provides for trade union activity and the right to strike (section 35). The Committee also notes with interest that the Labour Code of 1993 guarantees employers and workers the right to freedom of association, to trade union activity (sections 7 and 264) and the right to strike and to organize a lockout (section 8).

The Committee moreover is addressing a request directly to the Government for clarification on certain points in respect of the trade union rights of public servants and minors, the right of trade union associations to elect their representatives in full freedom and to organize their administration and activities and to formulate their programme without interference from the public authorities.

[The Government is asked to report in detail in 1999.]

Cameroon (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 2 of the Convention. Previous authorization.* For several years, the Committee has pointed out that (1) Act No. 68/LF/19 of 18 November 1968 subjecting the legal existence of a trade union or occupational association of public servants to the previous approval of the Minister for Territorial Administration, and (2) section 6(2) of the 1992 Labour Code, under which persons forming a trade union that has not yet been registered and who act as if the said trade union has been registered shall be liable to prosecution, are not consistent with *Article 2* of the Convention.
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> In addition, the Committee on Freedom of Association has been apprised of cases where registration of trade unions of public servants has been refused, particularly in the teaching sector, and the Conference Committee in June 1994 and June 1996 reminded the Government of the need to amend its legislation and practice in the very near future to ensure effective application of the Convention.
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> The Committee notes that the Government merely reiterates its previous statements that it will not fail to inform the Committee of developments in the declaration system. The Committee once again strongly urges the Government to take the necessary measures in the near future to ensure that workers, including public servants, have the right to form organizations of their choice, *without previous authorization*.
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> *Article 5. Prior approval for affiliation to an international organization.* Recalling that *Article 5* of the Convention lays down that all occupational organizations shall have the right to affiliate freely with international organizations of workers and employers, the Committee points out once again to the Government that section 19 of Decree No. 69/DF/7 of 6 January 1969 provides that trade unions or occupational associations of public servants may not join a foreign occupational organization without obtaining prior approval from the Minister responsible for "supervising fundamental freedoms".

> The Committee had noted the Government's previous statements to the effect that this Decree is issued under Act No. 68/LF/7 of 19 November 1968 and will be brought into conformity with the Convention once the new Act on civil servants' unions is promulgated. The Committee once again urges the Government to take the necessary measures, in the very near future, to abolish prior approval in order to bring the legislation into conformity with this Article of the Convention.
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> The Committee would remind the Government that it can call on ILO technical assistance for the preparation of draft legislation in conformity with the Convention. The Committee expresses the firm hope that the Government will take the necessary measures in the near future and will supply a detailed report in this regard.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

[The Government is asked to supply full particulars to the Conference at its 87th Session.]

Canada (ratification: 1972)

1. The Committee takes note of the Government's report and of the conclusions of the Committee on Freedom of Association with regard to various cases concerning Canada.

2. *Articles 2 and 3 of the Convention. The right of workers and employers to establish organizations of their own choosing without previous authorization; the right to formulate their programmes.*

Newfoundland

Recalling that its earlier comments concerned the need to amend section 10.1 of the *Public Service (Collective Bargaining) Act (No. 59)* which relates to the procedure for the designation of "essential employees" and confers broad powers on the employer in this respect, the Committee notes with interest the information in the Government's last report according to which an effective procedure has been established for defining "essential workers". In addition, the joint labour-employer working group, whose mandate includes a review of legislation affecting freedom of association with a view to proposing necessary reforms, has submitted its report, the conclusions of which are now under consideration. The Committee asks the Government to keep it informed of developments in this respect.

Alberta

The Committee recalls that its comments have concerned in particular section 117.1 of the *Public Service Employee Relations Act* as amended in 1983 by Act No. 44 which bans strikes by all hospital workers including kitchen staff, porters and gardeners, and therefore goes beyond the acceptable restrictions to the right to strike implicitly recognized in *Article 3* of the Convention. The Committee notes with regret the information supplied by the Government in its report, according to which the amendments made to the Alberta Labour Code, to the Public Service Employee Relations Act and the Regional Health Authorities Act have not changed the situation of health workers with regard to the right to strike. The Committee recalls that, in its view, the right to strike is an intrinsic corollary of the right to organize and any restriction should be limited to public servants exercising authority in the name of the State or to essential services in the strict sense of the term. The Committee asks the Government to indicate whether kitchen workers, porters and gardeners in hospitals have the right to strike; if they do not, the Committee emphasizes that these categories of workers should not be denied this fundamental right.

3. In general, as regards the right to strike, the Committee notes with interest the adoption of Bill C-19, an Act to amend the Canada Labour Code (part I), section 87.4 of which defines the activities which must be maintained in the event of a strike or lockout, and section 94(2.1) of which expressly prohibits employers from using replacement workers in order to undermine a union's representational capacity, which thereby bring the legislation into greater conformity with the principles of freedom of association.

With regard to the right to organize in agriculture and horticulture, the Committee takes due note of the Government's information to the effect that workers in these sectors are covered by the provisions of the Labour Codes applicable in the Provinces of British Columbia, Saskatchewan, Manitoba, Quebec, Nova Scotia, Prince Edward Island, Newfoundland and the North West Territories and the Yukon, the federal Labour Code being applicable in the North West Territories and the Yukon. Nevertheless, the Committee notes that certain workers in the Provinces of Alberta (section 2 (2)(e) of the Labour Code), Ontario (section 3 (b) and (c) of the amended Labour Relations Act of 1995) and New Brunswick (section 1 (5)(a) of the Labour Code) are excluded from the coverage of labour relations legislation and thus do not enjoy the protection provided with regard to the right to organize and to negotiate collectively. In addition, with regard to Ontario, the Committee notes the conclusions of the Committee on Freedom of Association in case No. 1900 (308th Report, paragraphs 139-194), and observes with regret that domestic workers are also excluded from the coverage of the labour relations legislation (section 3(a) of the amended Labour Relations Act of 1995). Under the circumstances, the Committee must recall that the guarantees provided by the Convention apply to all workers without distinction whatsoever and that all workers must enjoy the right to establish and join organizations of their own choosing, with the sole possible exception of the armed forces and the police. The Committee therefore urges the Government to take the necessary measures to amend the aforementioned legislation in order to bring it into full conformity with the principles of freedom of association, and to keep it informed in this regard.

In addition, a request regarding certain points is being addressed directly to the Government.

Central African Republic (ratification: 1960)

The Committee takes note of the information contained in the Government's report.

The Committee recalls that its previous comments concerned the need to amend or repeal sections 1, 2 and 4 of Act No. 88/009 of 19 May 1988 on freedom of association and the protection of trade union rights, amending the Labour Code, in order to bring the legislation into fuller conformity with the Convention:

- section 1 of the Act provides that any person having lost the status of worker cannot either belong to a trade union or take part in its leadership or administration;
- section 2 provides that trade union officers must be members of a trade union;
- section 4 provides that trade unions constituted in federations and confederations may group together in a single central national union;

1. *Right of workers' organizations to elect their representatives in full freedom (Article 3 of the Convention).* The Committee recalls that sections 1 and 2 of Act No. 88/009 of 19 May 1988 may infringe the right of organizations to elect their representatives in full freedom by preventing qualified persons, such as full-time union officers or pensioners, from carrying out union duties, and that there is also a real risk of interference by the employer through the dismissal of trade union officers, which deprives

them of their trade union office (see General Survey on freedom of association and collective bargaining, 1994, paragraph 117). The Committee therefore repeats its request that excessive restrictions regarding the requirement that trade union officers must belong to the same occupation should be relaxed in order to ensure that first-level organizations can freely affiliate to federations and confederations, and that qualified persons, such as those employed by the trade unions or pensioners, may carry out union duties.

2. *The right of workers' organizations to establish federations and confederations of their own choosing (Articles 5 and 6* of the Convention*)*. The Committee had noted with interest that the new Constitution of 14 January 1995 enshrined the possibility of trade union pluralism and freedom of association (article 10). While noting that, according to the Government, section 30 of Act No. 61/221 introducing the Labour Code provides that trade unions can affiliate to form associations, the Committee recalls that section 4 of Act No. 88/009 of 19 May 1988 amending the Labour Code still provides that trade unions constituted in federations and confederations may group together in a single central national union. Given that the Government had indicated in its previous reports that legislation would be adopted to implement the constitutional provisions, the Committee once again requests it to communicate the relevant texts as soon as they are adopted to repeal the reference to a single central national union contained in Act No. 88/009 of 19 May 1988.

3. *Articles 3 and 10 of the Convention.* Furthermore, the Committee draws the Government's attention to section 11 of Ordinance No. 81/028 of 1984 concerning the Government's power of requisition in the event of a strike, when so required by the "general interest". The Committee considers it necessary to restrict powers of requisition to cases in which the right to strike may be limited or even prohibited, namely in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population or in a situation of acute national crisis see (see General Survey, op. cit., paragraphs 152 and 159).

The Committee requests the Government to keep it informed in its next report of any change in the situation in either legislation or practice and, in particular, to indicate the measures taken to amend sections 1, 2 and 4 of the 1988 Act as well as section 11 of the 1984 Ordinance in order to bring them into full conformity with the requirements of the Convention.

Colombia (ratification: 1976)

The Committee notes the Government's report and the discussion that took place during the 1998 Conference Committee.

Firstly, the Committee regrets that the Government's report consists only of a reference to its previous report. The Committee recalls that during its examination of the application of the Convention in Colombia, the Conference Committee in 1998 expressed "the firm hope that the Government would supply a *detailed report* to the Committee of Experts on the concrete progress made both in law and in practice to ensure the application of this fundamental Convention ratified more than 20 years ago".

The Committee recalls that it had noted in its previous observation that the Government had prepared a Bill with the assistance of an ILO mission on freedom of association which visited the country in 1996, repealing and modifying a number of provisions of the Substantive Labour Code that had been criticized by the Committee for a number of years; however, the National Congress decided to shelve the Bill.

In this regard, the Committee is obliged to recall that there are numerous legislative provisions giving rise to problems of conformity with the Convention. In particular, the Committee has been requesting the Government for a number of years to repeal or modify the following provisions:

- section 365(g) of the Labour Code on the requirement, in order for a trade union to be registered, that the labour inspector must certify that there is no other union;
- section 384 on the requirement that, in order to form a union, two-thirds of its members must be Colombian;
- section 388(1)(a) on the need to be of Colombian nationality to hold executive office in a trade union;
- section 388(c) on the requirement to have normally exercised the activity, trade or position characteristic of the trade union in order to be a trade union officer;
- section 432(2) on the need to be of Colombian nationality in order to be a member of a delegation submitting to an employer the list of claims that are being made;
- section 486 on the supervision of the internal management of trade unions and meetings of unions by public servants;
- section 444, last subsection, on the presence of the authorities at general assemblies convened to vote on referral to arbitration or on the calling of a strike;
- section 422(1)(c) on the need to have exercised the activity, occupation or position characteristic of the trade union in order to hold office in a federation or confederation;
- sections 388(f) and 422(f), which provide that a person must not have been condemned to a serious penalty, unless he or she has been rehabilitated, nor sued for ordinary offences at the time of election;
- section 380(3) which provides that "any member of a trade union executive who has been responsible for the dissolution of a union as a sanction may be denied the right of trade union association in any form for up to three years (...)";
- section 417(1), which provides that "federations and confederations have the right to the recognition of their legal personality and have the same functions as trade unions, except for the calling of a strike, which is the sole competence, when so authorized by the law, of the respective trade unions or groups of workers directly or indirectly concerned";
- section 488(3), which provides that "when a strike is called, the Minister of Labour and Social Security, ex officio or at the request of the trade union or trade unions representing the majority of workers at the enterprise, or if not, of the workers gathered in a general assembly, may, once a strike is called, submit to a ballot by all the workers in the enterprise whether they wish to submit the remaining dispute to arbitration";
- the prohibition of strikes, not only in essential services in the strict sense of the term, but also in a very wide range of public services which are not necessarily essential (new section 450(1)(a) of the Code and Decrees Nos. 414 and 437 of 1952; 1543 of 1955; 1593 of 1959; 1167 of 1963, 57 and 534 of 1967);
- the power of the Minister of Labour to refer a dispute to arbitration when a strike lasts over a specific period (section 448(4) of the Code); and
- the possibility of dismissing a trade union officer who has intervened or participated in an unlawful strike (new section 450(2) of the Code), including when the strike is

unlawful due to failure to comply with excessive requirements such as tho mentioned in the foregoing subparagraphs.

Under the circumstances, the Committee is obliged to stress the gravity of tl situation and requests the Government to immediately take the measures necessary to hav the above-noted provisions amended or repealed as soon as possible in order to bring th legislation into conformity with the Convention. The Committee requests the Governme to keep it informed in this regard.

[The Government is asked to report in detail in 1999.]

Congo (ratification: 1960)

The Committee notes that the Government's report has not been received. It mu therefore repeat its previous observation which read as follows:

> The Committee notes the Government's report and the entry into force of Act No. 6-9 of 6 March 1996 amending and supplementing certain provisions of Act No. 45/75 of I March 1975 establishing the Labour Code. It also notes the conclusions of the Committee c Freedom of Association in Cases Nos. 1850 and 1870 approved by the Governing Body i June and November 1996 (304th and 306th Reports of the Committee on Freedom c Association).
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> The Committee notes with interest that the Labour Code establishes the possibility c trade union pluralism in that occupational unions have the right to organize freely in a enterprises in Congo (section 210-2).
>
> With regard to its previous comments, the Committee notes:
>
> — as regards the need to amend the legislation on the minimum service "indispensable t safeguard the general interest" to be maintained in the public service, which i organized by the employer, wherein refusal to participate is deemed to constitut serious misconduct (section 248-16), in order to limit the minimum service to th operations which are strictly necessary to meet the basic needs of the population an within the framework of a negotiated minimum service, that the Government undertake to review this provision in consultation with the social partners with a view t modifying it or adopting an implementing text. The Committee asks the Governmer to keep it informed of any developments in this matter and to provide a copy of the tex modifying this provision of the Labour Code;
>
> — as regards the fact that the Labour Code contains no provisions authorizing workers an employers to include in collective agreements a clause on the deduction of trade unio dues from the wages of workers with the written consent of the latter, that, accordin to the Government, this question is on the agenda of the next session of the Nationa Labour Advisory Commission and that, in cooperation with the social partners, procedure will be adopted which takes account of the requirements of the Conventior The Committee asks the Government to keep it informed of any developments in thi respect in its future reports.
>
> Lastly, with regard to Cases Nos. 1850 and 1870, the Committee asks th Government to report on the progress of the draft amendment to the Act on the righ to strike in the public service. It trusts that any amendment will be consistent with th principles of freedom of association and that restrictions, or prohibitions, of th exercise of the right to strike will be confined to public servants exercising authority i the name of the State or to essential services in the strict sense of the term, namel services the interruption of which would endanger the life, health or safety of the whol or part of the population, which is not the case of the post and telecommunicatior services as such.

The Committee hopes that the Government will make every effort to take th necessary action in the very near future.

Costa Rica (ratification: 1960)

The Committee notes the Government's report and recalls its previous comments regarding the following provisions:

- section 60(2) of the Constitution, which prohibits foreigners from holding office or exercising authority in trade unions;
- sections 375 and 376(a), (b) and (c) of the Labour Code, which prohibit the exercise of the right to strike in the public, agricultural and stock-raising, forestry, rail, maritime and air transport sectors.

In regard to the second question, the Committee also notes with satisfaction the information contained in the Government's report, in regard to the ruling on 27 February 1998 by the Constitutional Council of the Supreme Court of Justice which found unconstitutional the prohibition of the exercise of the right to strike in the public, agricultural and stock-raising and forestry sectors (sections 375 and 376(a) and (b) of the Labour Code).

Nevertheless, the Committee regrets that the prohibition on the right to strike in the rail, maritime and air transport sectors as provided for in section 376(c) of the Labour Code remains in force.

As regards the prohibition on foreigners holding office or exercising authority in trade unions (section 60(2) of the Constitution), the Committee also notes the Government's statement that the draft Bill to amend this provision, submitted to the Legislative Assembly in August 1997, was returned without any progress being made since the Executive Authority does not have the right to initiate reforms of the Political Constitution. In this respect, the Committee also notes with interest that, in accordance with the Government's statement, the Ministry of Labour and Social Security, to follow the necessary legal procedures, submitted a report to the President of the Legislative Assembly on 8 May 1998 to intercede in Plenary Session to pursue the submission of the Constitutional Reform Bill in question in accordance with the law.

The Committee refers to the question of inequality of treatment between solidarist associations and trade unions in regard to the management of compensation funds for dismissed workers and recalls that it also noted with interest the draft text on the Occupational Capitalization and Economic Democratization Fund, which gave effect to the Committee's request that trade union organizations should also be able to manage compensation funds for dismissed workers. In this respect, the Committee requests the Government to keep it informed of the situation on the draft text in question.

The Committee expresses the firm hope that the Government will continue to make every effort to repeal the legislation which prohibits the right to strike in the rail, maritime and air transport sectors and prevents foreigners from holding office or exercising authority in trade unions, if they so wish. The Committee requests the Government to keep it informed of any measures adopted on the above points.

Finally, the Committee is addressing a request directly to the Government.

Côte d'Ivoire (ratification: 1960)

The Committee refers to its previous comments and notes with interest the Circulars of 1996 forwarded by the Government concerning the abolition of prior agreement for establishing trade unions, transmitted by the Government in response to its observation.

Croatia (ratification: 1991)

The Committee notes the information supplied by the Government in its report as well as the recommendations of the Committee on Freedom of Association in Cases Nos. 1923 and 1938 (see 308th Report, paragraph 224, 309th Report, paragraph 185, and 310th Report, paragraphs 15 to 17).

The Committee notes the recommendations of the Committee on Freedom of Association in Case No. 1923 (see 308th Report, paragraph 224) in which it requested the Government to amend the Croatian Railways Act of 1994, to ensure that minimum services to be maintained during a strike are limited to operations that are strictly necessary to avoid endangering the life or normal living conditions of the whole or part of the population. In this regard, the Committee notes with satisfaction that according to the information provided by the Government, a decision of the Constitutional Court of 15 July 1998 has invalidated the provisions restricting the right to strike in the railway and post and telecommunication sectors (article 23(4) of the Croatian Railways Act and article 16 of the Establishment of the Croatian Public Post and Telecommunication Enterprise Act). The provisions of the Croatian Railways Act relating to minimum services during a strike will, therefore, be submitted for amendment to the Croatian Parliament.

The Committee had requested the Government to provide it with a copy of the Law on Civil Servants and Government Employees and on the Salaries of the Officials in Judicial Bodies, as well as any text issued under the new Labour Law under the terms of article 237(1) which relates to freedom of association. The Committee notes with satisfaction that the Government has sent the collective agreement in force for civil servants which provides, amongst other things, for the right to strike of civil servants as well as solidarity strikes, and a copy of the Civil Servants and Government Employees and Holders of Judicial Functions Act, article 4 of which provides for the right to organize of civil servants.

Article 2 of the Convention. The Committee had noted that article 165 of the new Labour Law provides that a minimum of ten individuals of full age is necessary to establish an employers' association. The Committee notes that the Government indicates that employers' organizations can be established jointly by legal and physical persons and that it is not considering modifying this provision. The Committee, however, requests the Government to decrease the required number of individuals in order to establish an employers' organization so as not to hinder the right of employers to form organizations of their choice.

Article 3. The Committee had noted that the Union of Autonomous Trade Unions of Croatia had criticized the Law on Associations, particularly as regards its provisions respecting the property and the transfer of the assets of social organizations. In this respect, the Committee notes the recommendations of the Committee on Freedom of Association in Case No. 1938 (see 309th Report, paragraph 185, and 310th Report, paragraph 17) in which it requested the Government to determine the criteria for the division of immovable assets formerly owned by the trade unions in consultation with the trade unions concerned should they be unable to reach an agreement among themselves, and fix a clear and reasonable time frame for the completion of the division of the property once the period of negotiation has passed.

Articles 3 and 10. Finally, the Committee notes that the Government has not replied to the comments made by the Union of Autonomous Trade Unions of Croatia and the Croatian Associations of Unions concerning two decisions of the Supreme Court of the Republic of Croatia of 15 May 1996 and 11 July 1996. In these decisions, the Court, referring to article 209 of the Labour Law, declared that strikes for the purpose of protesting against unpaid salaries were unlawful. The Court stated that such strikes did not meet the prerequisites for a strike to be legitimate as regards its purpose. In this respect, the Committee recalls the conclusions of the Committee on Freedom of Association in its 304th Report (paragraph 216) in a case relating to similar issues in the Republic of Congo, where it considered that protest strikes in a situation where workers have for many months not been paid their salaries are legitimate trade union activities and thus, called for the withdrawal of all anti-union reprisals against the strikers, in particular dismissals. The Committee concurs with this opinion and asks the Government to take into consideration the importance it attaches to this principle and to send its observations in its next report on any measures taken in this regard.

Cuba (ratification: 1952)

The Committee notes the information provided by the Government in its report and the conclusions and recommendations of the Committee on Freedom of Association of the Governing Body in Case No. 1805 (see the 308th Report, November 1997, paragraphs 225 to 240). The Committee recalls its previous comments which referred to the need to remove the reference to the "Central Organization of Workers" from the Labour Code of 1985 (sections 15 and 16) and Legislative Decree No. 67 of 1983 (section 61), which confer on the above Central Organization of Workers the monopoly of representing the country's workers on government bodies.

The Committee notes the Government's comments and, in particular, its policy of recognizing the autonomy of trade union organizations, which has meant that they have been able to submit draft texts to Parliament and which have been subsequently approved. The Government also states that the groups established for the thematic revision of the Labour Code are continuing their work of consulting the various economic sectors, employers' organizations and trade unions.

The Committee is bound to note that the Committee on Freedom of Association has examined the complaints with regard to the refusal to recognize other trade union organizations and the temporary detention of their leaders (Case No. 1628 of November 1992 and Case No. 1805 of November 1997, respectively). The Committee emphasizes that the explicit reference to the "Central Organization of Workers" in the labour legislation should be removed to enable all workers in law and in practice to establish and join organizations of their own choosing outside the established trade union structure, in accordance with *Article 2 of the Convention*.

The Committee once again requests the Government to keep it informed of any progress achieved in this respect.

Cyprus (ratification: 1966)

The Committee notes the information provided in the Government's report.

In particular, the Committee notes with interest that a certain number of improvements have been made by amending the 1996 Act respecting trade unions. Section 16 of the Act now provides that the withdrawal or the annulment of the registration of a trade union may only be made at the request of the registrar of the trade unions by decision of the courts and not, as previously, by decision of the registrar of trade unions, whose decision could be re-examined by the Council of Ministers, and the re-examination was subject to an appeal to a court of law.

In its previous comments, the Committee had insisted on the need to amend sections 79A and 79B of the Defence Regulations which grant the Council of Ministers discretionary power to prohibit strikes in the services that they considered essential. Th Committee recalled that strikes can only be prohibited in essential services in the stric sense of the term, namely services the interruption of which would endanger the lif personal safety or health of the whole or part of the population.

The Government indicates in its latest report that the draft Bill on the right to strik in essential services is being examined by a ministerial committee which has met o several occasions and most recently on 17 July 1998. The Government reiterates tha every effort will be made to ensure that the new legislation is in conformity with th provisions of the Convention.

The Committee recalls that it has been formulating its observations on th restrictions on the right to strike provided for in the Defence Regulations for more tha a decade. The Committee trusts that the necessary steps will be taken in the near futur to ensure the total conformity of the legislation with the principles of the Conventio namely that the right to strike may only be prohibited in essential services in the stric sense of the term, for public servants exercising authority in the name of the State or i times of acute national crisis. The Committee trusts that the Government will be able t indicate in its next report that substantial progress has been made in this regard. It request the Government to provide information on the progress made and to provide the text o the new legislation as soon as it has been adopted.

Denmark (ratification: 1951)

The Committee notes the information provided in the Government's report.

The Committee recalls that its previous comments concerned section 10 of Act No 408 of 1988 establishing the Danish International Ships' Register (DIS) which prevente workers employed on board Danish ships but who are not residents of Denmark fro being represented in collective bargaining by organizations of their own choosing, i contravention of *Articles 2, 3 and 10 of the Convention*. The Committee notes that th Government maintains the point of view which it has expressed in previous report concerning the need for a broader discussion within the ILO on international register based upon a study which could be made on the effects of such registers on non-domicile seafarers' working and living conditions. The Government adds that most seafarers organizations have made a two-year truce with the shipping federations in March 199 securing the organizations' right to be represented in collective negotiations with th foreign organizations in order to make sure that the concluded agreements are at a acceptable international level.

While noting that an agreement has temporarily been reached with some seafarers organizations concerning negotiations in respect of non-resident seafarers on board Danish ships, the Committee recalls that *Articles 2, 3 and 10* provide that workers, withou distinction, shall have the right to join the organization of their own choosing and that such organizations shall be able to function to ensure the furtherance and defence of thei interests. It once again trusts that the Government will consider taking the necessary steps to ensure these non-resident seafarers the right to be represented by organizations of thei own choosing.

The Committee is also addressing a request on another point directly to the Government.

Djibouti (ratification: 1978)

The Committee notes with regret that the Government's report has not been received.

However, it notes with interest that, at the request of the Government, an ILO direct contacts mission visited the country from 11 to 18 January 1998 in the context of two complaints of violation of freedom of association from the Inter-Trade Union Association of Labour/General Union of Djibouti Workers (UDT/UGTD) (Cases Nos. 1851 and 1922), leading to the restitution of the premises of the UDT/UGTD and the restoration of social dialogue (see 309th Report of the Committee on Freedom of Association, approved by the Governing Body in March 1998).

However, the Committee notes once again that, in its conclusions in November 1998, the Committee on Freedom of Association notes with great concern that, despite the promises made by the Government to the direct contacts mission, no tangible progress has been achieved since then in the restoration of freedom of association in full (see 311th Report, approved by the Governing Body in November 1998). In the same way as the Committee on Freedom of Association, the Committee of Experts urges the Government to provide detailed information on any concrete measures that it has taken to restore freedom of association in full, and particularly to lift the anti-trade union reprisals against the leaders of the UDT/UGTD and their lawyer, and to ensure that the legislation is revised in consultation with the social partners.

On this latter point, the Committee recalls that its previous comments concerned the need to repeal or amend the following provisions:

— section 5 of the Act on Associations, as amended in 1977, to ensure that prior authorization for the establishment of associations may not be imposed for the establishment of trade unions, so as to guarantee the application of *Article 2 of the Convention*, under which workers shall have the right to establish organizations of their own choosing *without previous authorization*;

— section 6 of the Labour Code, which limits the holding of trade union office to Djibouti nationals, in order to allow foreign workers to hold trade union office, at least after a reasonable period of residence in the country, so as to guarantee the application of *Article 3*, under which *workers' organizations shall have the right to elect their representatives in full freedom*;

— section 23 of Decree No. 83-099/PR/FP of 10 September 1983, establishing the conditions governing the right to organize and the right to strike of public servants, which confers on the President of the Republic the power to requisition public servants who are indispensable to the life of the nation and to the operation of essential services, so as to limit this power of requisitioning to cases in which, in the Committee's opinion, restrictions or prohibitions on the exercise of the right to strike are admissible, namely with regard to public servants exercising authority in the name of the State or in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national crisis.

The Committee urges the Government to restore freedom of association as rapidly as possible in law and in practice and requests it to keep it informed of all progress made in this respect.

The Committee hopes that the Government will make every effort to take the necessary measures in the near future.

Dominican Republic (ratification: 1956)

The Committee notes the Government's report and recalls that its previous comments referred to:

- the requirement that federations must obtain a two-thirds majority vote of their members to be able to establish a confederation (section 383 of the Labour Code);
- the opposition of certain enterprises in export processing zones to the establishment of unions and the disregard of trade union rights.

With regard to the first point, the Committee notes with interest the Government's statement that it is fully prepared to submit a draft text to the national Congress in the very near future, to enable federations to be able to include in their statutes the necessary provisions to establish confederations and, to this end, the Government will consult the most representative organizations.

The Committee hopes to note in the very near future that the legislation limiting the establishment of confederations has been repealed and that it is left to the statutes of federations to establish the criteria in this respect.

With regard to the opposition of certain enterprises in the export processing zones to the establishment of trade unions and their disregard to trade union rights, the Committee notes with interest the setting up of a specialized unit in the labour inspectorate to protect freedom of association in these types of enterprises, and that eight collective agreements and various other agreements have been concluded. The Committee trusts that the Government will keep it informed of all progress made in this respect.

In regard to the observing of trade union rights in sugar cane plantations, the Committee notes with interest the Government's statement that it is doing its utmost to ensure the full exercise of trade union rights by assigning labour inspectors to each establishment during the sugar harvest and that the Ambassador of Haiti in the Dominican Republic has officially recognized the progress achieved in the estates of the Government's State Council in 1998.

The Committee requests the Government to inform it in its next report of any progress made on the above points.

Finally, the Committee is addressing a request directly to the Government.

Ecuador (ratification: 1967)

The Committee notes the Government's report and the discussion that took place during the 1998 Conference Committee.

The Committee recalls that in its previous observation, it noted that two Bills had been drafted in the course of a technical assistance mission of the Office, which took place in September 1997 at the request of the Government. The contents of these Bills and the Government's comments on certain points are as follows:

- the amendment of section 59(f) of the Civil Service and Administrative Career Act so that civil servants can establish organizations for the promotion and defence of their occupational and economic interests (on this point, the Government indicates in its report that article 35(9) of the Constitution recognizes the right to organize of civil servants). The Committee observes, however, that article 35(9) provides that "labour relations in the institutions included in subsections (1) (legislative, executive and judicial organs and bodies), (2) (electoral bodies), (3) (organs of control and regulation), and (4) (entities that are part of an autonomous regime) of article 118, and with respect to legal persons created to exercise public authority, along with civil servants, are covered by the laws governing public administration";

- the repeal of section 60(g) of the same Act which prohibits civil servants from striking or supporting or participating in strikes, and from establishing trade unions, and the adoption of a provision according to which strikes are prohibited only for civil servants who exercise authority in the name of the State (officials in ministries, the judicial authorities and the armed forces) or for those who are carrying out essential services within the strict meaning of the term (those the interruption of which would endanger the life, personal safety or health of the whole or part of the population);
- an addition to section 452 of the Labour Code to the effect that in the event of refusal of registration, the occupational trade union in question may appeal to the competent judicial authorities for the merits of the case to be examined as well as the reasons for the measure being taken;
- the amendment of section 454(11) to provide that higher-level organizations enjoy the right to express their opinions on the Government's economic and social policies in a peaceful manner but shall not intervene in purely party, political or religious activities unconnected with their function of promoting and defending the interests of their members, nor shall they oblige their members to intervene in them;
- adding to the end of section 466(2) a provision to the effect that in the event of refusal of registration, the works committee in question shall be able to appeal to the competent judicial authorities for the purpose of having the merits of the question examined along with the reasons for the measure;
- the deletion from section 466 of paragraph (4) concerning the requirement to be Ecuadorean in order to serve as a trade union official. The Government in its report indicates that this section of the Labour Code would become inoperable were a non-Ecuadorean worker to request to be recognized as a trade union leader, pleading the application of Convention No. 87 or requesting a competent judge to declare the provision of the Labour Code to be unconstitutional. The Committee observes, however, that article 13 of the Constitution states that "foreigners are entitled to the same rights as Ecuadoreans, unless otherwise provided in the Constitution and the law". The Committee considers that the Constitution, as presently worded, does not clearly guarantee to Ecuadoreans the right to hold trade union leadership posts;
- the amendment of section 472 on the dissolution by administrative measures of a works committee in order to grant to the workers' or employers' organizations concerned or the Ministry of Labour the right to appeal to the judicial authorities in order to request dissolution of the committee. The Government indicates that for the last 15 years, no such dissolution has taken place in practice;
- the amendment of section 522(2) concerning minimum services in the event of a strike providing that in the absence of agreement, the measures for the provision of minimum services will be laid down by the Ministry of Labour through the General Labour Directorate or the relevant subdirectorate in consultation with the workers' and employers' organizations in the sector; and
- the repeal of Decree No. 105 of 7 June 1967 on unlawful work stoppages and strikes for which prison sentences can be imposed on the instigators of collective work stoppages and on those taking part in them.

In addition, the Committee recalls that for many years it has been referring to the following matters:

- the need to reduce the minimum number of workers (30) needed to be able to establish associations, works committees or assemblies in order to organize works committees (sections 450, 466 and 459 of the Labour Code). Although the minimum number of 30 workers would be admissible for industrial trade unions, the Committee considers that the minimum number should be reduced to facilitate the establishment of enterprise unions and not to hinder their establishment, particularly in view of the very large proportion of small enterprises in the country;

- the deprival of the guarantee of security to workers who take part in a solidarity strike (section 516 of the Labour Code). The Government insists on the fact that it is trying to prevent the abusive use of solidarity strikes that would result in long periods of immobility;
- the implicit refusal of the right to strike for federations and confederations (section 505 of the Labour Code).
- the need for civilian workers in bodies associated with or dependent on the armed forces, particularly workers in the maritime transport sector of Ecuador, to enjoy the right to join trade unions of their choice, and for the Union of Ecuadorean Shipping Transport Workers (TRASNAVE) to be registered with the utmost dispatch (Case No. 1664 of the Committee on Freedom of Association). The Government indicates that the relationship between the different constitutional provisions would require the revision of the trade union's request for registration.

The Committee observes that the Government stresses with respect to all the points raised the supreme importance of article 163 of the Constitution by virtue of which international conventions and treaties are incorporated ipso jure into national law and prevail over other laws and lower-level standards. The Government indicates further that the Minster of Labour is in the process of drafting the necessary directives so that when mere administrative acts covered by national laws occur, then the criteria set out in the Constitution would apply. In the case of conflict, resort will be had to international labour Conventions, and these will prevail over the laws. In addition, the Government states that: (i) it is seeking to identify acceptable mechanisms so that while there is no new labour legislation, the existing legal provisions will not apply and the international labour Conventions will prevail; (ii) the Government has never abandoned the idea of continuing with the reform of the labour legislation. In this regard, if the Ministry of Labour considers it necessary, it will request the technical assistance of the Office to bring the labour legislation into conformity; (iii) the Ministry of Labour indicates its good will in retaining all the positive aspects of the technical assistance mission that visited Ecuador in 1997; and (iv) it requests the Committee to indicate what could be taken from the agreements reached during the mission in 1997, in the light of the new Constitution, in order to assist them with the follow-up. Finally, the Government states that it is seeking solutions to the other problems raised by the Committee on which it has not yet commented.

In these circumstances, the Committee, while taking note of the good will expressed by the Government, observes that there continues to be a large number of provisions that should be modified in order to bring the legislation and the practice into conformity with the Convention. The Committee requests the Government to take the measures necessary without delay to bring the legislation and the practice into conformity with the Convention. The Committee reminds the Government that the Office is available to provide technical assistance, and expresses the firm hope that the Government will supply information in its next report concerning all progress achieved with respect to the questions raised.

The Committee notes that certain new provisions of the 1998 Constitution give rise to, or could give rise to, problems with respect to the application of the Convention:

- Article 35(9) which provides that "the right of association is guaranteed to all workers and employers and the right to organize their programmes without previous authorization and in conformity with the law. As concerns labour relations for those in State institutions, the workers will be represented by one organization". The Committee recalls that imposing a trade union monopoly within state institutions or bodies is not compatible with the requirements of the Convention. In this regard, the Committee requests the Government to indicate if article 35(9) of the Constitution implies that only one organization or many can be established per public body or institution; if many can be established, whether preferential rights are granted to the most representative organization, and in the case of an organization becoming the most representative, whether it can exercise these rights in the place of the organization that no longer has the majority.
- Article 35(10), first paragraph, which recognizes and guarantees the right to strike and the right to lockout to workers and employers pursuant to the legislation and second paragraph, which states that "it is prohibited to interrupt, for whatever reason, public services in particular those concerning health, education, justice and social security; electrical energy, drinking-water and sewers; transformation, transport and distribution of fuel, public transport and telecommunications. The law will provide appropriate sanctions". The Government states that the first part of paragraph (10) recognizes and guarantees the right to strike and that the concept of "interruption" under the Constitution is interpreted as an action which results in the interruption or cessation, far removed from what the law generally stipulates. In this context, the Committee is of the opinion that the principle whereby the right to strike may be limited or prohibited in the public service or in essential services, whether public, semi-public or private, would become meaningless if the legislation defined the public service or essential services too broadly. As the Committee has already mentioned in previous General Surveys, the prohibition should be confined to public servants acting in their capacity as agents of the public authority or to services whose interruption would endanger the life, personal safety or health of the whole or part of the population. The Committee considers that the interruption of strikes in the public sector is too extensive and that in particular education and general transport services (of persons and products) cannot be considered to be essential services in the strict sense of the term. In these circumstances, the Committee requests the Government to take measures to amend the constitutional provisions noted in conformity with freedom of association principles and to specify the measures envisaged or taken to grant compensatory guarantees to workers deprived of the right to strike.

Egypt (ratification: 1957)

The Committee notes the information provided in the Government's report. The Committee notes that the Government has not yet remedied the discrepancies between the legislation and the Convention that have been raised by the Committee for a number of years, in relation to the obligation to ensure that workers have the right to establish organizations of their own choosing and that workers' organizations have the right to elect their representatives and organize their administration and activities in full freedom.

1. *Article 2 of the Convention.* In its previous comments, the Committee requested the Government to ensure that sections 7, 13 and 52 of Act No. 35 of 1976, as well as sections 14, 16, 17 and 41 of Act No. 12 of 1995 were amended so that all

workers would have the right to establish, should they so wish, occupational organizations outside the existing trade union structure.

The Government states in its report that section 13 of Act No. 35 of 1976 is compatible with the Convention since the section provides for the forming of a single country-wide "general" union of "workers and apprentices employed in occupational categories or industries that are similar, interrelated or engaged in the same type of production". The Government states that workers have the right to belong to unions at all levels pursuant to section 7 of the same Act, amended by Act No. 1 of 1981, which provides that "the union structure is established according to a pyramidal structure on the basis of the unity of the union" with the specific union organizations then being named in the legislation. The law empowers the General Confederation of Trade Unions to issue rules and procedures to establish union organizations, without any interference from the public authorities. The Government stresses that workers are free to join or withdraw from these unions, and that trade union unity is preferred by the union movement in Egypt, that trade union plurality, particularly at the level of the enterprise, would result in conflicts and weaken the trade union movement, as would allowing workers to join more than one general union.

The Committee recalls in this regard the importance of the right of workers to establish organizations *of their own choosing* which is violated where a trade union monopoly is maintained by law; even if workers have the right to join or withdraw from those organizations set out in the law, they are still denied the right to form and join organizations outside the existing trade union structure. With respect to the Government's reference to the General Confederation of Trade Unions being entitled to establish union organizations, the Committee recalls the primary importance it attaches to the right of workers to form and join organizations under *Article 2*. In addition, the preference of the trade union movement for a unified system is not sufficient to justify a legal monopoly. The Committee reiterates that where at some point all workers have preferred to unify the trade union movement, they should still remain free to choose to set up unions outside the established structures should they so wish (see General Survey on freedom of association and collective bargaining, 1994, paragraph 96). The Committee, therefore, urges the Government to ensure that sections 7, 13 and 52 of Act No. 35 of 1976, as well as sections 14, 16, 17 and 41 of Act No. 12 of 1995, are amended so that all workers will have the right, should they so wish, to establish occupational organizations outside the existing trade union structure, in conformity with *Article 2*.

2. *Article 3*. With reference to Act No. 12 of 1995, in its previous comments the Committee drew attention to the need to amend the following: (i) sections 41 and 42 to remove the power of the Confederation of Egyptian Trade Unions to exercise control over the nomination and election procedures for trade union office; (ii) sections 62 and 65 so that workers' organizations have the right to organize their administration, including their financial activities, without interference from the public authorities.

With respect to sections 41 and 42, the Government states that the role of the Confederation is limited to establishing timetables for elections and setting out the procedures for nomination; these roles being of an administrative and not a supervisory nature. The Government states further that the Confederation represents the union movement at the national level and has the role of directing the trade union movement. The Committee repeats its view that the procedures for nomination and election to trade union office should be fixed by the rules of the organization and not by law or by the single trade union central organization with the support of the law. The Committee, therefore, again requests the Government to take steps to ensure that sections 41 and 42 of Act No. 12 of 1995 are amended.

Concerning section 65, the Government confirms that the process of financial control rests with the Confederation, while asserting that this is an improvement over the former provision which placed financial control in the hands of the Ministry of Manpower and Training. The Committee recalls its view that allowing the single central organization expressly designated by law to exercise financial control is contrary to *Article 3*. The Committee again requests the Government to take appropriate steps to ensure that section 62, which obliges lower-level unions to allocate a certain percentage of their income to higher-level organizations, and section 65 of Act No. 12 of 1995, are amended so that workers' organizations have the right to organize their administration, including their financial activities, in accordance with *Article 3*.

3. *Articles 3 and 10*. In its previous comments the Committee raised concerns with respect to the following provisions:

(i) sections 93 to 106 of the Labour Code, as amended by Act No. 137 of 1981, providing for compulsory arbitration at the request of one party beyond services that are essential in the strict sense of the term;

(ii) section 70(b) of Act No. 35 of 1976 authorizing the Public Prosecutor to ask the criminal courts to remove from office the executive committee of a trade union that has provoked work stoppages or absenteeism in a public service;

(iii) section 14(i) of Act No. 12 of 1995 requiring the General Union to approve the organization of strike action.

The Committee notes with interest that the Government refers to a new draft Labour Code which introduces a system of mediation in the case of labour disputes, which can continue to arbitration at the request of both parties. A new tripartite arbitration body is also created. The Committee requests the Government to supply a copy of the provisions of the new draft Labour Code amending or repealing sections 93 to 106 of the Labour Code.

Concerning section 70(b) of Act No. 35 of 1976, the Government indicates that the provision is in conformity with the Convention since it is limited to undertakings providing general services or public facilities or a given facility that responds to public needs. The Committee is of the view that any restrictions or limitations on the right to strike should not go beyond public servants exercising authority in the name of the State, or essential services in the strict sense of the term, namely services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Survey, op. cit., paragraphs 158 and 159), and requests the Government to take measures to ensure that section 70(b) is amended accordingly.

Finally, with reference to the Committee's previous comments on section 14(i) of Act No. 12 of 1995, the Government informs the Committee that the General Union's approval of the strike would support the union committee and strengthen it. According to the Government, obtaining authorization from the General Union is only a regulatory procedure, the aim of which is not to seek acceptance or refusal but to organize the strike process. The Committee recalls, however, that the legislation states clearly that the General Union is to "approve" the organization of strike action by workers, and requiring such approval, even if regulatory in nature, is not in conformity with the Convention, as it denies first-level organizations the right to strike without seeking the authorization of the General Union. The Committee requests the Government to amend the legislation in order to bring it into closer conformity with the principles of freedom of association so that first-level organizations have the right to strike without having to seek the authorization of the General Union.

The Committee is also addressing a request directly to the Government.

Ethiopia (ratification: 1963)

The Committee notes the Government's report. It also notes the statement of the Government representative to the Conference Committee in 1998 and the discussion that followed, as well as the most recent conclusions of the Committee on Freedom of Association in Cases Nos. 1888 and 1908 (see 310th Report of the Committee on Freedom of Association, approved by the Governing Body at its 272nd Session, June 1998).

The Committee must again note with serious concern the grave allegations of violations of trade union rights brought before the Committee on Freedom of Association.

Articles 2 and 10 of the Convention. In its previous comments, the Committee, noting that section 3(2)(b) of Labour Proclamation No. 42-1993 excludes teachers from its scope of application, requested the Government to indicate how teachers' associations could promote their occupational interests. The Committee notes the statement of the Government representative to the Conference Committee that, as civil servant, they are governed by laws other than labour laws, and that specific legislation was under consideration. The Committee requests the Government to indicate the precise provisions permitting teachers' associations to promote their occupational interests, and to forward to the Committee any draft legislation governing teachers' associations.

The Committee notes that despite being informed by the Government in its report of 1994 that a new law was expected to be adopted "in the very near future" to address the concerns that had been raised by the Committee with respect to the denial of the right of state administration, judges, prosecutors and others to establish and join organizations for the promotion of their occupational interests, the Government has not since provided any information on the progress of this law. The Committee requests the Government to inform it of the status of this law, and reminds the Government that workers' and employers' *without distinction whatsoever*, are to have the right to establish and join organizations of their own choosing.

Article 3 (Right of workers to elect their representatives). The Committee notes that the Committee on Freedom of Association cases concern, inter alia, the forced removal of elected trade union leaders of the Federation of Commerce, Technical and Printing Industry Trade Unions (FCTP) and of the Ethiopian Teachers' Association (ETA). In this regard, the Committee recalls that the removal of trade union leaders and the nomination by the administrative authorities of members of the executive committees of trade unions constitutes a violation of *Article 3* of the Convention. Noting that a judgement rendered by the Court of Ethiopia has upheld the claims made by ETA's elected leadership that they represent Ethiopian teachers, the Committee requests the Government to comply with this decision. The Committee notes that the Government has lodged an appeal on this decision. The Committee requests the Government to inform it of the outcome of the appeal and to provide a copy of the higher-court judgement as soon as it is handed down.

Article 4. The Committee notes with concern that the Ministry of Labour has cancelled the registration of the former Confederation of Ethiopian Trade Unions (CETU) pursuant to the powers vested in it under section 120 of the Labour Proclamation, and observes that the Federal High Court has confirmed the decision of the Ministry. The Committee requests the Government to take measures to amend the legislation to ensure that an organization shall not be liable to be dissolved or suspended by administrative authority, in conformity with *Article 4* of the Convention and to keep it informed of any progress in this regard.

Articles 3 and 10. The Committee notes that Labour Proclamation contains broad restrictions on the right to strike: the definition of essential services contained in section 136(2) is too broad and should notably not include air transport and railway services, urban and inter-urban bus services and filling stations, banks and postal and telecommunications services (section 136(2)(a), (d), (f) and (h)); sections 141(1), 142(3), 151(1), 152(1), 160(1) and (2) allow labour disputes to be reported to the Ministry for conciliation and binding arbitration by either of the disputing parties.

The Committee therefore requests the Government to amend its legislation so that the ban on strikes is limited to essential services in the strict sense of the term and disputes may be submitted to the Labour Relations Board for binding arbitration only if *both* parties agree or in relation to essential services whose interruption would endanger the life, personal safety or health of the whole or part of the population or in case of an acute national crisis.

Finally, the Committee is addressing a request directly to the Government.

[The Government is requested to report in detail in 1999.]

Germany (ratification: 1957)

The Committee notes the information provided in the Government's report.

With respect to the denial of the right to strike in the public service, which the Committee has previously commented upon, the Committee notes that the Government in its report reiterates that civil servants, irrespective of their functions, do not enjoy the right to strike. In support of this position, the Government relies on provisions of the Constitution, and the fact that a civil servant has no entitlement to be appointed to a particular function or to continue performing previously assigned duties, since this is a discretionary power of the superiors. The Government stresses the importance of guaranteeing the mobility of officials, and contends that the mobility required by public servants would be seriously impaired if their legal status varied according to their individual functions and they were granted the right to strike depending on their duties. The Government indicates that the Public Service Reform Act, 1997 introduced improvements regarding officials' mobility with a view to ensuring optimal use of staff resources.

Furthermore, the Committee notes the Government's concern regarding the sanctioning of individual categories of officials in breach of the strike ban. The Government also states that even if there were political consensus, which there is not, on such a major decision as confining the ban on strikes to those exercising authority in the name of the State, it would require a long transitional period, given that the officials concerned would not consent to being dismissed from their office as civil servants in order to be transferred to salaried employee status. The Government also reiterates that, in its opinion, it could be deduced from the discussions that led to the adoption of the Convention that a ban on strikes for civil servants would not be in violation of the Convention.

The Committee recalls that it has always considered that the right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests. While accepting that the right to strike may be restricted or even prohibited in the public service, the Committee has clearly established that such a limitation may be applied only in the case of public servants exercising authority in the name of the State. While noting the particular legal and policy considerations that have given rise to a broad restriction on the right to strike for the German public service, the Committee must, however, endeavour to maintain uniform criteria when determining the compatibility of legislation with the provisions of the Convention.

The Committee, therefore, once again requests the Government to indicate the measures taken or contemplated to ensure that public servants who do not exercise authority in the name of the State and their organizations, are not denied the right to organize their activities and formulate their programmes in defence of their economic, social and occupational interests by means which include strikes, if they so wish, pursuant to *Articles 3 and 10 of the Convention*.

Ghana (ratification: 1965)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee had noted in its previous observations that the National Advisory Committee on Labour (NACL) had recommended that sections 11(3) and 12(1) of the Trade Union Ordinance of 1941 be amended and repealed, respectively, so that the Registrar no longer had extensive powers to oppose the registration of a trade union.
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> The Committee has also pointed out section 3(4) of the Industrial Relations Act No. 299 of 1965, which stipulates that the Registrar shall not appoint a trade union for collective bargaining purposes for any class of employees if there is in force a certificate appointing another trade union for that class of employees or any part of that class, and it had noted that the NACL recommended amending that section. The Committee had considered that it should be amended so that a union with the support of a simple majority of the members of a bargaining unit be granted a certificate.
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> The Committee had requested the Government to take steps to give effect to these recommendations so as to bring its legislation into conformity with *Articles 2 and 3 of the Convention*.
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> The Committee notes the assurances of the Government in its report that the recommendations for the amendment of said sections had been forwarded to the competent authority.
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> The Committee recalls that it has commented on these matters for a number of years and it asks the Government to take effective steps to amend its legislation at an early date, and to keep it informed of any progress made in this respect and to communicate the texts of the amendments as soon as they have been adopted.
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> 2. The Committee had noted that section 6 of the Emergency Powers Act, 1994 (Act No. 472), prohibits public meetings and processions in areas which had been under a state of emergency. The Committee notes the Government's statement that the Act is applicable only in exceptional cases, to areas where a state of emergency has been declared and for the duration of the state of emergency only. The Government further states that the Act is not intended to be of general application within the country nor is it directed against the activities of workers or unionized labour which could lead to an infringement of their right to assemble freely. The Government communicated the Committee's concern to the Attorney General and will convey his reaction in due course.
>
> While noting the Government's statement, the Committee observes that the Emergency Powers Act (No. 472), 1994, provides for very extensive powers (such as the suspension of operation of any law, section 6(2)(viii)) and it wishes to recall once more that freedom of assembly and demonstration constitutes a fundamental aspect of trade union rights (General Survey on freedom of association and collective bargaining, 1994, paragraphs 35-37) and that the authorities should refrain from any interference which would restrict this right or impede

the lawful exercise thereof, and again urges the Government to repeal this legislation or to exclude explicitly the fundamental trade union rights from its scope of application.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

The Committee is also addressing a request directly to the Government.

Greece (ratification: 1962)

The Committee takes note of the information supplied by the Government in its report. It also notes the comments made by the Greek General Confederation of Labour (GGCL) relating to allegations of serious infringements of the right to strike mainly through court decisions, as well as the observations sent by the Government in this regard.

Article 2 of the Convention. Concerning the freedom of association of seafarers, the Committee had requested the Government to send it the legal provision which had partially suppressed the exclusion of seafarers from the application of Act No. 1264 of 1982 as well as any legislation enacted or contemplated with a view to giving these workers all the rights guaranteed by the Convention.

The Committee notes that the Government indicates in its report that article 1(2)(b) of Act No. 1264 of 1982 provides that seafarers are covered by a special legal regime which, combined with the guarantees of articles 12 and 13 of the Greek Constitution, extends to seafarers the principles of freedom of association contained in the Convention. It acknowledges, however, that despite two attempts, it was unsuccessful in repealing the exclusion of the right to organize of seafarers from Act No. 1264 of 1982 because of the social partners. The Committee recalls once again that it has noted with concern for many years that seafarers' organizations are excluded from Act 1264 of 1982 which concerns trade unions. It urges the Government to recognize for these workers the rights that are guaranteed in the Convention.

Article 3. (Right to strike). The Committee takes note of the Government's reply to the comments made by the GGCL. In particular, the Committee notes that the Government indicates that the limitations provided for in Act 1264/82 on the right of workers employed in public or utility undertakings to go on strike do not violate the Constitution nor international conventions. The Government points out that these limitations are also provided for in the majority of foreign laws and are accepted by foreign jurisprudence and practice. Furthermore, the Government indicates that article 31 of the European Social Charter provides that, by way of exception, limitations can be imposed on the rights established by the Charter (including the right to strike), provided that these limitations are necessary in a democratic society for the safeguarding of the respect for the rights and freedoms of other individuals or for the protection of public order, national security, public health or the virtuous morals.

Grenada (ratification: 1994)

The Committee notes with regret that, for the third year in succession, the Government's first report on the application of the Convention has not been received. The Committee requests the Government to provide detailed answers to the questions contained in the report form on the application of the Convention, which was transmitted by the International Labour Office. The Committee requests the Government in particular to provide it as rapidly as possible with information on the legislative situation and on the application in practice of the measures adopted to give effect to the Convention on freedom of association.

[The Government is asked to report in detail in 1999.]

Guatemala (ratification: 1952)

The Committee notes the Government's report and recalls its previous comments which referred to the following points:

— the strict supervision of trade union activities by the Government (section 211(a) and (b) of the Labour Code);

— limiting the possibility of participating in the establishment of a provisional trade union executive committee or to be elected a trade union official to Guatemalan nationals (new paragraph, sections 220(d) and 223(b));

— the requirement for the members of the provisional trade union executive committee to make a sworn statement to the effect that, amongst other matters, they have no criminal record and that they are active workers in the enterprise or self-employed workers (new paragraph (d) of section 220);

— the requirement of being active workers at the time of election and that at least three are able to read and write (section 223(b));

— the obligation to obtain a two-thirds majority of the workers of the enterprise or workplace (section 241(c)) and of the members of a trade union (section 222(f) and (m)), to be able to declare a strike;

— the prohibition of a strike or suspension of work by agricultural workers during the harvests, with several exceptions (sections 243(a) and 249);

— the prohibition of a strike or suspension of work by workers of enterprises or services, whose interruption would, in the Government's opinion, seriously affect the national economy (sections 243(d) and 249);

— the possibility of calling upon the national police to ensure continuity of work, in the event of an unlawful strike (section 255);

— the detention and trial of persons who try to publicly call an illegal strike or suspension of work (section 257);

— the imposition of a prison sentence ranging from one to five years for persons who carry out acts intended not only to cause sabotage or destruction (which do not come within the scope of the protection offered by the Convention), but also to paralyse or disrupt the functioning of enterprises which contribute to the economic development of the country with a view to jeopardizing national production (section 390(2) of the Penal Code);

— the imposition of compulsory arbitration without the possibility of having recourse to strike action in public services which are not essential services in the strict sense of the term, in particular public transport and services related to the supply of fuel (section 4(d) and (e) as amended by Order 35-96 of 27 May 1996).

With regard the last point, the Committee notes with interest that the Government, in accordance with its indications in its report, will begin to analyse the services which are not considered essential by the ILO supervisory bodies, for the purpose of the exercise of the right to strike.

The Committee also notes that, in accordance with the Government's statement in its report, almost all of the points raised by the Committee of Experts were submitted for consideration to the Tripartite Committee on International Affairs in April 1997 for the purpose of formulating a Bill, but that a consensus was not reached on the points which should be the subject of reforms. The Committee regrets the internal difficulties that have prevented the Tripartite Committee from meeting and obtaining a tripartite agreement in respect of the legislative amendments proposed by the Committee of Experts.

The Committee again expresses the firm hope that the Tripartite Committee will meet in the near future and will reach an agreement on the Bill which takes into account all the comments made. The Committee again hopes that in its next report the Government will inform it of the concrete measures adopted to bring both its law and practice into conformity with the requirements of the Convention.

The Committee requests the Government in its next report to inform it of the specific measures adopted in this respect.

Guinea (ratification: 1959)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> Referring to its previous comments concerning sections 342 and 351 of the Labour Code respecting the right to strike in essential services, which provide inter alia that the arbitration procedure may be implemented at the request either of a party to a dispute, or of a minister if he considers that a strike occurring in an essential service or during a period of national difficulty is likely to be prejudicial to public order or to the general interest, the Committee notes with interest the content of Order No. 5680/MTASE/DNTLS/95 of 24 October 1995 which defines and determines essential services in the context of the right to strike. The Committee observes that according to the Order, essential services are "those which if interrupted may endanger the lives, freedom, safety or health of individuals", and that the list provided corresponds partly to the principles of freedom of association. The Committee also observes that essential services imply the provision of a minimum service negotiated by an employer and his workers.
>
> Observing that public transport and communication, which do not in itself constitute an essential service, appear on the list contained in the Order, the Committee requests the Government to indicate, should the parties not manage to reach an agreement, the measures envisaged for a joint or independent body to examine rapidly and without formalities the difficulties raised by the definition of a minimum service (see General Survey on freedom of association and collective bargaining, 1994, paragraph 161).
>
> In addition, the Committee recalls that arbitration at the request of one of the parties, in this case the employer, is likely to restrict the exercise of the right to strike, contrary to *Article 3 of the Convention*. The Committee requests the Government to take measures in order to ensure that arbitration cannot be imposed at the request of only one of the parties to a dispute.
>
> The Committee also requests the Government to continue to provide, in its future reports, information on the application in practice of sections 342, 350 and 351 of the Labour Code and Order No. 5680/MTASE/DNTLS/95 of 24 October 1995 which defines and determines essential services in the context of the right to strike.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Guyana (ratification: 1967)

The Committee takes note of the information provided by the Government in its latest report.

The Committee takes due note of the adoption by the Parliament on 28 October 1997 of Bill No. 33 on Trade Union Recognition.

The Committee has examined the legislation in question and notes that sections 20(2), 21(2) and (3) provide that in case of both trade union unity or diversity, in a given bargaining unit, the most representative union for collective bargaining must, at least, include 40 per cent of the workers of the bargaining unit who took part in the ballot. The Committee notes that the criteria which allow the determination of the appropriate bargaining unit are contained in section 19.

The Committee notes that the law provides that an application for certification of recognition can be made by another union two years after the recognized majority union obtained certification as such (section 29(1)b)). The legislation also provides that an application may be made although two years have not expired if the board is satisfied that good reasons exist for such an application (section 29(1) (b) and (2)). However, no application for certification of recognition may be made by a trade union earlier than 12 months from the date when the application made by that union for certification with respect to the same bargaining unit was last determined or from the date when its certificate of recognition was cancelled (section 29(4)).

The Committee notes with interest that application for certification of recognition and determination of the appropriate bargaining unit are dealt with by an independent tripartite body provided by the legislation. The Committee has stated in paragraph 99 of its 1994 General Survey on freedom of association and collective bargaining, that industrial relations systems where only one bargaining agent may be certified to represent the workers of any given bargaining unit, which gives it the exclusive right to negotiate the collective agreement, does not raise difficulties under the Convention, provided that legislation or practice impose on the exclusive bargaining agent an obligation to represent fairly and equally all workers in the bargaining unit, whether or not they are members of the trade union.

In its previous comments, the Committee had also recalled the necessity to amend the Public Utility Undertakings and Public Health Services Arbitration Act (Chapter 54:01, sections 3, 12 and 19), so that compulsory arbitration in respect of a strike, liable to a fine or two months' imprisonment, may only be used for essential services in the strict sense of the term. The Committee notes that the Government has stated in its report that the industrial disputes subcommittee which is chaired by a representative of the unions is still to submit its report on the amendment of the legislation in question. Once again, the Committee trusts that the necessary measures will be taken in the near future to ensure that compulsory arbitration to bring an end to a strike can only be imposed in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee requests the Government to indicate in its next report any progress made in this respect.

Haiti (ratification: 1979)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee recalls that, for many years, its comments have referred to the need:
>
> — to repeal or amend section 236bis of the Penal Code, which requires that government approval be obtained to establish an association of more than 20 persons; section 34 of the Decree of 4 November 1983, which confers wide powers on the Government to supervise trade unions; and sections 185, 190, 199, 200 and 206 of the Labour Code, which impose restrictions on the right to strike;
>
> — to give legal recognition to the right to organize of public servants, in order to bring its legislation into conformity with section 35(3) and (4) of the 1987 Constitution, which

> provides constitutional guarantees of the freedom of workers in the public and private sectors and recognizes their right to strike, and thus to bring it into conformity with the provisions of the Convention.
>
> The Committee welcomes the Government's request for ILO technical assistance and its undertaking to amend the provisions of its legislation which are not in conformity with the Convention. The Committee hopes that the next report will show significant progress in bringing the whole of its legislation into conformity with the requirements of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Honduras (ratification: 1956)

The Committee notes that the Government's report does not respond to the Committee's previous comments which referred to:

— the exclusion from the scope of the Labour Code of workers in certain agricultural or stock-raising enterprises (section 2(1));

— the prohibition of more than one trade union in a single enterprise, institution or establishment (section 472);

— the requirement that trade union officers must be Honduran and be engaged in the corresponding activity (sections 510(a) and (c) and 541(a) and (c), respectively);

— restrictions on the right to strike, sections 495 and 563 (requirement of a two-third majority of the votes of the total membership of the trade union organization in order to call a strike), 537 (ban on strikes being called by federations and confederations), 555(2) (the power of the Minister of Labour and Social Security to end disputes in the petroleum production, refining, transport and distribution services), 558 (the need for government authorization for any suspension or stoppage of work in public services that do not depend directly or indirectly on the State), and sections 820 and 826 in conjunction with section 554(2) and (7) (which establishes compulsory arbitration without the possibility of calling a strike for as long as the arbitration award is in force (two years), for collective disputes in public services which are not essential in the strict sense of the term, such as transport services in general, and the petroleum production, refining, transport and distribution services, respectively).

The Committee had noted with interest that the preliminary draft text to reform the Labour Code of December 1995, prepared by the Tripartite Committee had taken the majority of the Committee's comments into consideration, namely:

— the abolition of the exclusion from the scope of the Labour Code of workers in certain agricultural or stock-raising enterprises (section 2(1)), *section 2 of the preliminary draft*;

— the abolition of the requirement that trade union officers must be engaged in the corresponding occupation, and allows foreigners who have been resident in the country for at least five years to stand for election to trade union office (sections 510(a) and 541(c)), *section 431(a) of the preliminary draft*;

— the reduction of the two-thirds majority vote of the total membership of the trade union organization required to declare a strike (sections 495 and 563) to a simple majority of the workers in the enterprise or trade union assembly, *section 517(c) of the preliminary draft*;

— the abolition of the prohibition of strikes being called by federations and confederations (section 537), *section 448 of the preliminary draft*;

- the abolition of the restrictions in respect of the exercise of the right to strike relative to the power of the Minister of Labour and Social Security to end a dispute in the petroleum production, refining, transport and distribution services (section 555(2)), and the requirement that any suspension or stoppage of work in public services that do not depend directly or indirectly on the State is subject to government authorization or six months' notice (section 558);
- with regard to compulsory arbitration in the public service (section 820 of the Labour Code), the Committee had noted with interest that, in conformity with *sections 521 and 502 of the preliminary draft*, arbitration would only be applied in the event of a protracted dispute between workers and employers in the public services covered by *section 529 of the preliminary draft*, which, in the opinion of the executive power, are of vital importance to the *life and safety of the population* (subsection 9). Nevertheless, the Committee had regretted to note that the petroleum production, refining, transport, distribution and by-products services (subsection 7), which are not essential services "in the strict sense of the term" were included in the list of essential services;
- with regard to "the services under all branches of activity of the public authority and any other branches which, in the opinion of the executive power, are of vital importance to the *economy of the population*, upon declaration of the President" (subsections 1 and 9), the Committee had considered that the general and broad drafting of these provisions could be interpreted in such a manner as to restrict the right to strike. The Committee is of the opinion that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State (see General Survey on freedom of association and collective bargaining, 1994, paragraph 158). With regard to the services of vital importance to the economy of the population, the Committee had considered the prohibition of strikes could only be justified in a situation of acute national crisis.

The Committee had also noted with regret that the preliminary draft did not amend section 472 of the Labour Code in force, which prohibits the existence of more than one trade union in a single enterprise, institution or establishment.

In this respect, the Committee had again pointed out that although it is not the purpose of the Convention to make trade union diversity an obligation, it does require this diversity to remain possible in all cases. In fact, there is a fundamental difference between a trade union monopoly established or maintained by law on the one hand and, on the other, voluntary groupings of workers which occur because they wish to strengthen their bargaining position. The Committee had acknowledged that excessive proliferation of occupational organizations may weaken the trade union movement. None the less, trade union unity imposed by law runs counter to the standards expressly laid down in the Convention (see General Survey, op. cit., paragraph 91).

In this connection, the Committee had considered that legislative provisions establishing the concept of the most representative trade unions are not in themselves contrary to the principle of freedom of association, provided that the determination of such organizations is based on objective and pre-established criteria so as to avoid any possibility of bias or abuse. Furthermore, the distinction should generally be limited to the recognition of certain preferential rights — for example, for such purposes as collective bargaining and consultation by the authorities. Where legislation provides for the recognition of a trade union in an enterprise as the exclusive bargaining agent, certain safeguards should be attached, such as the election of the representative organization by a majority vote of the employees in the bargaining unit concerned, the right of an organization, which in a previous election failed to secure a sufficiently large number of votes, to request a new election after a stipulated period (see General Survey, op. cit., paragraph 240).

Furthermore, the Committee had noted the Government's statement to the effect that the draft reform of the Labour Code is awaiting adoption. In this connection, bearing in mind that a direct contacts mission took place in 1986, the discussions in a number of sessions of the Conference Committee and the Office's technical assistance to the Government and the social partners in the preparation of the preliminary draft of the Labour Code, the Committee had hoped that the Labour Code had finally been adopted and that it had taken account of all the comments the Committee had been making for many years.

Moreover, the Committee recalls that the imposition of a precondition which provides that the establishment of a trade union requires 90 per cent of its members to be Honduran nationals (sections 475 and 500 of the Labour Code) is incompatible with the Convention. The Committee had also noted that whilst Decree No. 760 of May 1979 had amended the legislation in this respect, the above sections, which are contrary to the Convention, have been included in the Labour Code Bill of 1992. The Committee therefore requests the Government to adopt the necessary measures to repeal the above provisions.

The Committee again requests the Government to keep it informed of any developments in this respect and to forward a copy of the new Labour Code as soon as it has been adopted.

[The Government is asked to report in detail in 1999.]

Jamaica (ratification: 1962)

The Committee notes the information provided in the Government's report. The Committee recalls that for over 20 years, it has been commenting on the need to amend provisions of the Labour Relations and Industrial Disputes Act No. 14 of 1975, as amended ("the Act"), which empower the Minister to submit an industrial dispute to the Industrial Disputes Tribunal and hence to terminate any strike. The Committee has noted in the past that the Minister's powers to refer an industrial dispute to the Tribunal are too broad, the list of essential services contained in the first schedule to the Act is also too extensive and the notion of a strike which is likely to be "gravely injurious to the national interest" can be interpreted very widely.

The Committee notes with interest that in its most recent report, the Government states that it is making significant progress in reforming the Act through the Labour Advisory Committee. It informs the Committee that an amendment to the first schedule of the Act has been proposed, which would result in the deletion of the following services from the list of those deemed to be essential: public passenger transport service; telephone services; any business the main functions of which consist of — the issue and redemption of security, government securities and the trading in such securities, management of the official reserves of the country, administration of exchange control, providing banking services to the Government; and air transport services for the carriage of passengers, baggage, mail or cargo destined to or from Jamaica or within Jamaica. With respect to the power of the Minister to refer an industrial dispute to compulsory arbitration, the Government states that "the ILO's concern has been noted. This section of the Act is still in the process of revision. Any revised decision on this particular section of the Act will be communicated to the ILO as soon as possible". It notes further that the amendments that have been proposed thus far have emanated from the Labour Market Reform Committee, which considered the amendments necessary in the light of changes that have taken place over the years.

The Committee once again recalls that the provisions of the Act can be broadly interpreted in such a way as to permit the use of compulsory arbitration in situations other than those involving essential services or an acute national crisis. It therefore expresses the firm hope that the proposals of the Labour Market Reform Committee to amend the list of essential services will be adopted at an early date, and that the list will be further restricted to limit the list to essential services in the strict sense of the term, namely those services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The discretion of the Minister to amend the first schedule should also be limited by such criteria. Furthermore, the Committee hopes that serious attention will be given to amending the other provisions of the Act providing the Minister with extensive powers to refer an industrial dispute to the Tribunal (sections 9, 10 and 11A). The Committee again recalls that the imposition of compulsory arbitration should be clearly limited to essential services or situations of acute national crisis; otherwise, recourse to compulsory arbitration may only occur at the joint request of the parties concerned in the dispute. The Committee requests the Government to indicate in its next report any progress made in this regard.

Japan (ratification: 1965)

The Committee notes the information provided in the Government's reports. It further notes the conclusions of the Committee on Freedom of Association in Case No. 1897 which was examined in November 1997 (see the 308th Report approved by the Governing Body at its 270th Session). It also notes the observations made by the Japanese Trade Union Confederation (JTUC)-RENGO, Japan Federation of Prefectural and Municipal Workers' Unions and by the National Network of Firefighters and the Government's replies thereto.

1. *Denial of the right to organize of fire-fighting personnel.* In its previous comments, the Committee had noted with interest that, following consultations with the Ministry of Home Affairs, the Fire Defence Agency and the All-Japan Prefectural Municipal Workers' Union (JICHIRO), the Bill to amend the Fire Defence Organization Law was passed on 20 October 1995. It requested the Government to supply a copy of the amended law and to provide information on the operation of the new system. The Committee notes with interest that, according to the Government's report, section 14-5 of the Fire Defence Organization Law as amended provides that a fire defence personnel committee shall be established in each fire defence headquarters in order to contribute to the effective operation of the fire service by discussing opinions proposed by fire defence personnel with regard to, inter alia, matters concerning remuneration, working hours and other working conditions and welfare of the fire defence personnel.

Furthermore, the Committee notes the Government's indication in its latest report that the Ministry of Home Affairs and the Fire and Disaster Management Agency, in cooperation with the parties concerned such as the labour organizations and the fire defence headquarters, made thorough preparations by, inter alia, holding a national meeting with local governments to inform them of the new system. As a result of these efforts, the municipal regulations on the fire defence personnel committees have now been enacted and such committees have been established in all fire defence headquarters in Japan (as of April 1997 there were a total of 923 headquarters). In accordance with the municipal regulations, one-half of the members of the fire defence committees have been appointed by fire defence personnel and discussions concerning working conditions and other matters have begun.

The Japanese Trade Union Confederation (JTUC)-RENGO indicated in its communication dated 6 October 1998 that these fire defence personnel committees have been effective in many of those fire district headquarters where there exist autonomous firefighter organizations. JTUC-RENGO added that it expected to continue to be actively involved in the management of the committee system so that the working conditions and organization of work at fire stations can be steadily improved and to continue its efforts so that firefighters can be guaranteed the same organizing rights as other public servants.

In a communication dated 1 June 1998, the National Network of Fire-Fighters (FFN) indicates that it is engaged in activities to guarantee the right to organize of firefighters in opposition to the Government which considers that the issue has already been resolved by setting up fire defence personnel committees at fire defence headquarters. The FFN states that the Government has not yet resolved this issue given that the Local Public Service Law has not yet been amended to provide fire-fighting personnel with the right to organize. It adds that there are a number of structural faults and problems with the fire defence personnel committees set up by the Government. These difficulties include a lack of representativeness of personnel, limitation to one meeting a year and censure on certain proposals for discussion. The Japan Federation of Prefectural and Municipal Workers' Union (JICHIROREN), for its part, recognizes the fire defence personnel committees as a significant advance allowing the personnel to express their views; however, it emphasizes that these committees are not equivalent to giving personnel the right to organize. JICHIROREN raises concern about the limited powers vested in these committees and their ability to improve working conditions effectively. Finally, JICHIROREN proposes a number of changes which would be necessary in order to make these committees more effective and insists that the law on local public personnel needs to be amended in order to ensure fully the right to organize for fire-fighting personnel.

The Committee takes note of this information and of the comments made by the various trade union organizations representing fire defence personnel. The Committee notes the difficulties raised by the FFN and the JICHIROREN and in particular their hope that the Local Public Service Law be amended in order to provide fire-fighting personnel with the right to organize. In this regard, the Committee recalls that, when discussing the proposed system to establish fire defence personnel committees to discuss opinions proposed by fire defence personnel with regard to, inter alia, matters concerning remuneration, working hours and other working conditions and welfare of the fire defence personnel, the Committee on the Application of Standards of the International Labour Conference welcomed these developments with satisfaction as an important step towards the application of Convention No. 87. The Committee therefore requests the Government to keep it informed of any pertinent developments in the operation of the fire defence personnel committees and to indicate any steps envisaged to further guarantee the right to organize for fire defence personnel.

2. *Prohibition of the right to strike of public servants.* In its previous comments, the Committee had noted the observations made by JTUC-RENGO to the effect that there was a total ban on the right to strike for government employees both at the national and local levels, including for public school-teachers, and that dismissals and other sanctions due to strike action were quite common.

The Committee notes from the statement made by the Government in its report that the Supreme Court of Japan has maintained its judgement that the prohibition of strikes by state public employees is constitutional.

In its most recent communication, JTUC-RENGO indicates that new arrangements are being considered in respect of government employees who might be placed into new agencies outside the jurisdiction of the National Government Organization Law. These employees would apparently be given the choice between retaining their status as civil servants or becoming private sector workers. The former however would continue to be covered by the prohibition on strike action. The Committee recalls that the prohibition of strikes by public servants other than public officials acting in the name of the public powers may constitute a considerable restriction of the potential activities of trade unions (see 1994 General Survey on freedom of association and collective bargaining, paragraph 147). The Committee emphasizes the importance of taking the necessary measures so that public servants who are not exercising authority in the name of the State are not sanctioned for having exercised the right to strike. The Committee requests the Government to indicate any measures taken or envisaged in this respect in its next report.

Moreover, the Committee notes the conclusions of the Committee on Freedom of Association in Case No. 1897 concerning the trade union activities and strike action undertaken by the Japan National Hospital Workers' Union (JNHWU). While noting that the right to strike may be prohibited or restricted in the hospital sector, the Committee on Freedom of Association emphasized in Case No. 1897 that adequate protection should be given to the workers to compensate for the limitation thereby placed on their freedom of action. It underlined that such restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented. The Committee notes from these conclusions that, while the National Personnel Authority (NPA) set up to compensate for the prohibition on the right to strike of public servants had issued a decision concerning night duty of nurses in 1965, this decision was not implemented until 1996 (over 30 years later), despite several requests from the union and hospital directors, (see 308th Report of the Committee on Freedom of Association, paragraph 479). The Committee draws once again the Government's attention to the need to provide compensatory guarantees to workers whose right to strike is restricted.

The Committee requests the Government to indicate the measures taken to ensure in the future that adequate guarantees are provided to protect workers who have thus been denied one of the essential means of defending their occupational interests.

Kuwait (ratification: 1961)

The Committee notes the information provided in the Government's report.

The Committee notes with interest that, according to the Government's report, the draft law to modify and repeal certain provisions of the Labour Code (Act No. 38 of 1964) has been submitted to the competent authority for adoption.

The Committee intends to examine the draft Labour Code in the light of its conformity with the Convention, once it has been translated.

The Committee recalls that its previous comments raised the following discrepancies between the draft law and the Convention that still remained concerning the restrictions on the right of foreign workers and employers, as well as nationals, to form organizations, and the possibility of interference of the public authorities in trade union activities:

— the requirement of a least ten Kuwaiti employers in order to form an association (section 101);

- the requirement that at least 15 founding members must be Kuwaiti in order to establish a trade union (section 102(1));
- the requirement that a certificate of good conduct be obtained by each founding member from the Ministry of the Interior before a trade union may be established (section 103(e));
- the reversion of trade union assets to the Ministry of Social Affairs and Labour in the event of dissolution (section 110).

The Committee again requests the Government to take the necessary measures without delay, and in any event, prior to the adoption of the draft law, to ensure that all the legislation, including the provisions referred to above that have been the subject of comments from the Committee for a number of years, is brought into conformity with the requirements of the Convention.

[The Government is asked to report in detail in 1999.]

Kyrgyzstan (ratification: 1992)

The Committee notes with satisfaction the provisions of the Constitution of 5 May 1993 which guarantee the right of trade unions to organize on a voluntary basis (article 8), the right of all persons living in the Republic to exercise the right of association (article 16, paragraph 2) and the right of citizens to strike, the procedure and conditions for the exercise of that right being governed by law (article 30).

The Committee is also addressing a direct request to the Government on certain points.

Latvia (ratification: 1992)

The Committee takes note with satisfaction of the adoption on 23 April 1998 of the Law on Strikes which provides for the right to strike of employees of enterprises, institutions, organizations and branches.

The Committee also raises a number of points in a request directly addressed to the Government.

Liberia (ratification: 1962)

The Committee notes with regret that for the ninth year in succession the Government has been unable to reply to its previous comments. It must therefore repeat its previous observation which read as follows:

> The Committee notes that there has been no change in the legislative situation, which has been the subject of its comments for many years.
>
> The Committee recalls the need to amend or repeal Decree No. 12 of 30 June 1980 which prohibits strikes, section 4601-A of the Labour Practices Law which prohibits agricultural workers from joining industrial workers' organizations, and section 4102, subsections 10 and 11, of the Labour Practices Law which provides for the supervision of trade union elections by the Labour Practices Review Board. The Committee observes that these provisions are still in force and that they are contrary to *Articles 2, 3, 5 and 10 of the Convention*.
>
> Furthermore, the Committee recalls that the right to associate of workers in state enterprises and the public service is still not recognized in the national legislation, despite the Government's assurances in previous reports that the Civil Service Act was to be amended in order to give statutory effect to the right of the workers in this sector to establish and join organizations of their own choosing, in accordance with *Article 2* of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Madagascar (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. *The right of workers,* without distinction whatsoever, including *seafarers,* to establish and join organizations. The Committee takes due note that the Government specifies in its report that the Christian Federation of Seafarers of Madagascar (FECMAMA), affiliated to the trade union SEKRIMA, effectively represents seafarers. However, the Committee again asks the Government to provide in its next report the text currently in force of the Merchant Shipping Code, since the new Labour Code continues to exclude workers governed by the Merchant Shipping Code (section 1 *in fine* of the Labour Code).
>
> 2. *Requisitioning of persons.* Recalling that the conditions giving rise to the right to requisition persons set out in Act No. 69-15 of 15 December 1969 are too broad to be compatible with the principles of freedom of association, the Committee notes that the provisions of the above Act have not been amended by the new Labour Code. The Committee again asks the Government to contemplate amending its legislation, particularly sections 20 and 21 of Act No. 69-15, so that it authorizes the Minister to resort to this procedure only to end a strike in essential services in the strict sense of the term, that is those whose interruption would endanger the life, personal safety or health of the whole or part of the population, or in the case of public servants exercising authority in the name of the State or in the event of an acute national crisis. The Committee asks the Government to keep it informed of the measures taken or envisaged in this matter.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

The Committee is also addressing a direct request to the Government.

Mali (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee noted the Government's statement in its previous report that it was examining the possibility of amending section 229 of the Labour Code of 1992 so that the Minister's powers to order compulsory arbitration in order to end a strike would be limited to cases of acute national crisis.
>
> The Committee notes from the Government's statement in its report which arrived in June 1995 that the Council of Ministers can only render an arbitration decision binding if the strike is likely to endanger the life, health or safety of the population or dangerously paralyse an essential sector of the economy, without indicating whether it will amend the legislation. The Government adds in its report which arrived in November 1996 that a tripartite commission has been mandated to make proposals on any problems which might arise from the scope of section 229 of the Code.
>
> The Committee notes that section 229 provides that the Minister of Labour may refer certain disputes to the Council of Ministers, which may render an arbitration decision binding not only in disputes relating to "essential services the interruption of which would endanger the life, security or health of the population", which is compatible with the principles of freedom of association, but also in disputes liable to "compromise the normal operation of the national economy or concerning a vital sector of professions".
>
> The Committee therefore once again requests the Government to amend the legislation and to provide information in its next report on any progress made to limit the powers of the

Council of Ministers to render an arbitration decision binding to cases of acute national crisis, in order to bring its legislation into conformity with the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Malta (ratification: 1965)

The Committee takes note of the information provided by the Government in its report. It notes in particular that a subcommittee of the Malta Council for Economic Development is examining the Industrial Relations Act with the aim of proposing appropriate amendments in order to improve voluntary procedures for the settlement of trade disputes. It further notes the Government's indication that an agreement has been reached concerning the setting up of a panel of mediators from outside the Department of Labour and that proposals have been made for facilitating hearings by the industrial tribunal. However, the Government also indicates that while the discussion on these issues is still ongoing, there exists a consensus of agreement amongst the social partners represented in the Council that the repeal of the provisions of the Industrial Relations Act relating to resort to arbitration at the request of one of the parties in a trade dispute is premature.

While noting that some progress has been made in the discussions of the Council since the Government's last report, the Committee has to recall once again that it has been making comments on the incompatibility between the Industrial Relations Act and the provisions of the Convention for more than 20 years and therefore regrets that the discussions on the proposals to amend the Act are still at the stage of consultation and that the repeal of the provision on the resort to arbitration at the request of one of the parties is considered premature by the Council. The Committee once again recalls that the discrepancies between the legislation (sections 27 and 34 of the Industrial Relations Act of 1976) and the Convention have to do with the possibility for the Minister to impose compulsory arbitration, whereas recourse to binding arbitration should be restricted to the following cases: (a) public servants exercising authority in the name of the State; (b) essential services whose interruption would endanger the life, safety or health of the whole or part of the population; (c) situations of acute national crisis; or (d) cases in which both parties request arbitration. Furthermore, the Government had mentioned in previous reports that sections 27 and 34 of the Industrial Relations Act of 1976 were intended to protect the weaker party in disputes, particularly where the stronger party is not prepared to accept arbitration. In this respect, the Committee recalls that it has always considered that arbitration imposed by the authorities at the request of one party is generally contrary to the principle of voluntary negotiation of collective agreements, and thus the autonomy of the bargaining partners. An exception might, however, be made in the case of provisions which, for instance, allow workers' organizations to initiate such a procedure on their own for the conclusion of a first collective agreement (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 257).

The Committee asks the Government to keep it informed of the outcome of the discussions within the Malta Council for Economic Development and once again expresses the firm hope that the Government will take the necessary measures in the very near future to bring its legislation into conformity with the Convention.

Mauritania (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. *Article 3: Right of organizations to elect their representatives in full freedom.* Referring to the need to modify section 7 of the Labour Code as amended by Act No. 93-038 of 20 July 1993 which reserves the right of access to trade union office to those of Mauritanian nationality, the Committee notes the indication in the Government's report that section 273 of the draft Labour Code provides that one must be of Mauritanian nationality to hold trade union office or, for foreign workers, must have exercised the profession which the trade union represents in Mauritania for five consecutive years. According to the Government, this text is preferable to section 7 currently in force since it only restricts access to trade union office on the requirement that the workers have exercised the profession before being elected. The Government considers that it is in the workers' interest to have as trade union leaders persons who have an in-depth knowledge of the problems which concern them. The Committee takes note of this information and expresses the hope that the Labour Code will be amended on this point in the near future.
>
> 2. *Right of organizations to organize their activities and to formulate their programmes freely in order to promote and defend the interests of their members.* While recalling that its previous comments concerned the prohibition of strike in the case of compulsory arbitration (sections 39, 40, 45 and 48 of Book IV of the Labour Code currently in force), the Committee notes that the draft Code which would lift these restrictions has not yet been adopted. The Government indicates in its report that the draft Code has been discussed in the National Council for Labour and Social Security and that it is presently with an inter-ministerial committee before being submitted to the Council of Ministers. The Committee takes note of the Government's statement that the right of workers' organizations to have recourse to strike action in the defence of the social, economic and occupational interests of their members will be ensured. The Committee expresses the hope that the draft Labour Code will limit the prohibition of strikes only to situations where the Committee has considered it acceptable, that is in essential services in the strict sense of the term (those services the interruption of which would endanger the life, safety or health of the whole or part of the population) or in the case of an acute national crisis. The Committee requests the Government to provide a copy of the new Labour Code which it hopes will be adopted shortly.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Mexico (ratification: 1950)

The Committee notes the Government's report and recalls that for many years it has been referring in its comments to the following provisions:

1. *Trade union monopoly imposed by the Federal Act on State Employees and the Constitution:*

(i) the prohibition of the coexistence of two or more unions in the same state body (sections 68, 71, 72 and 73);

(ii) the prohibition of a trade unionist from leaving the union to which she or he belongs (section 69);

(iii) the prohibition of the re-election of trade union officers (section 75);

(iv) the prohibition of unions of public servants from joining trade union organizations of workers or rural workers (section 79);

(v) the extension of the restrictions applicable to trade unions in general to the single Federation of Unions of Workers in the Service of the State (section 84); and

(vi) the imposition by law of the trade union monopoly of the National Federation of Banking Unions (section 23 of the Act issued under article 123(B)XIII(bis) of the Constitution).

The Committee notes the information provided by the Government to the effect that, within the framework of the tripartite social dialogue that it is promoting, a formal mechanism for dialogue has been established on possible amendments to the federal labour legislation and that the Committee of Experts will be informed of its results in due course. Nevertheless, the Committee is bound to regret once again that, despite the time that has elapsed since the ratification of the Convention in 1950 and the first comments of the Committee, the Government has made no reply on the matters raised or concerning the measures taken in practice to bring its legislation into conformity with the provisions of the Convention and the principles of freedom of association.

In these circumstances, the Committee once again urges the Government to take the necessary measures as soon as possible to repeal or amend the above provisions of the Federal Act on State Employees and of the Constitution in order to bring the national legislation into conformity with the Convention and guarantee workers in the service of the State the right to establish organizations of their own choosing including, if they so wish, those outside the existing structure, in accordance with *Article 2 of the Convention*.

2. *Right of workers to elect their representatives in full freedom*. The Committee regrets to note that once again the Government has not provided its comments on section 372(II) of the Federal Labour Act, which prohibits foreigners from being members of trade union executive bodies. In these conditions, the Committee is bound to request the Government once again to take measures to allow foreign workers to take up trade union office, at least after a reasonable period of residence in the country, or where reciprocity conditions exist, at least for a certain proportion of trade union leaders (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 118).

The Committee expresses the firm hope that full account will be taken of its comments in the amendment to the labour legislation to which reference is made and it once again urges the Government to provide information in its next report on any developments with regard to all of the matters raised.

[The Government is asked to report in detail in 1999.]

Mozambique (ratification: 1996)

The Committee notes with satisfaction that the elaboration of Act No. 23/91 respecting the exercise of trade union activity provides for the principles of autonomy and independence of trade union organizations, the possibility of trade union pluralism and the protection of workers and their representatives against acts of anti-union discrimination. In particular, the Committee notes with satisfaction the following provision of Act No. 23/91:

- section 1, which guarantees workers, without distinction whatsoever, the exercise of trade union activities for furthering and defending their rights and their social and occupational interests;
- section 3, which provides that, in the exercise of freedom of association, workers are guaranteed the right to establish trade union organizations of their own choosing, to freely join and to renounce membership of trade union organizations;
- section 5, which grants trade union organizations the right to draw up their constitutions, to elect their representatives in full freedom and to organize their activities and to formulate their programmes.

Similarly, the Committee notes with satisfaction Act No. 6/91, which guarantees the exercise of the right to strike and respects the principles of the right to organize.

The Committee is addressing a request directly to the Government in respect of the right to freedom of association of public officials.

Myanmar (ratification: 1955)

The Committee notes the written and oral information provided by the Government representative to the Conference Committee in 1998, as well as the discussion which took place therein and the resulting special paragraph in the Conference Committee's report for continued failure to implement the Convention. The Committee also notes the information provided in the Government's latest report.

The Committee notes from the Government's report that the drafting of a new State Constitution is under way, as well as the review and redrafting of old labour laws, including the Trade Unions Law. The Government adds that, only after the enactment of the new Trade Unions Law can there be practical application of the provisions contained therein.

The Committee must recall, however, that the Government has been referring to the drafting of new labour legislation and a new Constitution for over five years now, yet no specific progress or developments have been communicated to the Committee in this regard. Furthermore, the Committee would once again recall that it has been commenting upon the failure to apply this Convention, both in law and in practice, for over 40 years. In its previous comments, the Committee urged the Government, in particular, to adopt the measures necessary to ensure the right of workers to establish, without previous authorization, and to join, subject only to the rules of the organization concerned, first-level unions, federations and confederations of their own choosing for the furtherance and defence of their interests and to ensure the right of first-level unions, of federations and of confederations to affiliate with international organizations *(Articles 2, 5 and 6 of the Convention)*. The Committee can only reiterate the urgent need for the Government to adopt the necessary measures to ensure fully the right to organize, and the right to affiliate with international organizations, without impediment and would request the Government to furnish with its next report a copy of the most recent draft revision of the Trade Unions Law so that it might assess the conformity of this draft with the Convention.

[The Government is asked to supply full particulars to the Conference at its 87th Session.]

Namibia (ratification: 1995)

The Committee notes the information provided by the Government in its latest report.

In its previous comments, the Committee had noted the adoption of the Export Processing Zones Amendment Act, 1996, which provided for the application of the Labour Act to export processing zones, an Act whose application had previously been excluded in these zones. The Committee had asked the Government, however, to repeal the provision in the Amendment Act which prohibited any employee from taking action by way of, or participating in, a strike in an export processing zone (EPZ), an action for which the worker is liable to disciplinary penalty or dismissal (section 8(2)(a) and (b)).

In its latest report, the Government indicates that disputes in EPZs have to be channelled through the dispute resolution mechanisms as provided for in the Labour Act and, in the event a dispute remains unresolved, it shall be referred to compulsory arbitration. The Government indicates that, due to the high rate of unemployment, it reached a compromise with the labour movement to prohibit strikes and lockouts for a period of five years. The Government adds that, in Namibia, the right to employment is more fundamental than the right to strike.

While noting the Government's statement that, due to the high rate of unemployment, the prohibition of strikes for five years was the result of a compromise with the labour movement, the Committee cannot but observe that the prohibition of strikes in export processing zones is not drafted as a clause in a collective agreement, but is rather incorporated in legislation with provision for severe penalty. In the view of the Committee this is incompatible with the provisions of the Convention, which provide that all workers, without distinction whatsoever, shall have the right to establish organizations of their own choosing and that such organizations shall have the right to organize their activities and to formulate their programmes *(Articles 2 and 3 of the Convention)* (see General Survey on freedom of association and collective bargaining, 1994, paragraph 169). It therefore requests the Government to indicate at an early date any progress made in ensuring that workers in export processing zones, like other workers in the country, will not be penalized for strike action taken in the defence of their interests.

In addition, the Committee notes that section 8(10) of the EPZ Amendment Act, 1996, provides that the provisions of that section, which concern the application of the Labour Act to EPZs and the prohibition of strikes and lockouts, shall be deemed to have been repealed if not re-enacted by the Parliament within a period of five years after the commencement date of the Amendment Act. The Committee notes with concern that this would appear to affect the application generally of the Labour Act to EPZs after the year 2001. The Government is therefore requested to indicate the measures taken or envisaged to ensure that workers in EPZs will continue to be afforded the full protection of the Convention, including the full exercise of the right to organize, beyond this period.

[The Government is asked to report in detail in 1999.]

Nicaragua (ratification: 1967)

The Committee notes the Government's report and recalls its previous comments which referred to the following provisions of the Labour Code of 1945 and the Regulation on Trade Union Associations of 1951:

— guaranteeing the right of association of public servants, self-employed workers in the urban and rural sectors and persons working in family workshops;

— abolishing the requirement of an absolute majority of the workers of an enterprise or workplace for the establishment of a trade union (section 189 of the Labour Code);

— amending the provision on the general prohibition of political activities by trade unions (section 204(b) of the Labour Code);

— amending the requirement that trade union leaders must present to the labour authorities the registers and other documents of a trade union on application by any of the members of that union (section 36(2) amending the Regulation on Trade Union Associations);

— allowing foreign workers to have access to trade union office (section 35 of the Regulation on Trade Union Associations);

— lifting the excessive limitations on the right to strike, such as the requirement of the majority of 60 per cent for calling a strike, prohibiting strikes in rural occupations when products may perish if not immediately sold, and the referral of a dispute to compulsory arbitration by the authority, in services which are not essential in the strict sense of the term (sections 225(3), 228(1) and 314 of the Labour Code);

- lifting the restrictions on federations and confederations exercising the right to strike (section No. 53 of the Regulation on Trade Union Associations).

The Committee notes with satisfaction that the provisions on freedom of association in the new Labour Code (Act No. 185 of 30 October 1996) which repeal and amend the majority of provisions which have been the object of the Committee of Expert's comments for many years.

Section 2 of the new Labour Code includes in its scope, with the sole exception of the armed forces, all persons who are resident in Nicaragua (section 3). Public servants, self-employed workers in the urban and rural sectors and persons working in family workshops are covered by the new Labour Code and, therefore, enjoy the right of association.

Furthermore, the new Labour Code has repealed the following provisions:

- the requirement of an absolute majority of the workers of an enterprise or a workplace for the establishment of a trade union (section 189 of the former Labour Code);
- the general prohibition of political activities by trade unions (section 204(b) of the former Labour Code);
- the requirement that trade union leaders must present to the labour authorities the registers and other documents of the trade union on application of any of its members (section 36 of Act No. 1260 amending the Regulation on Trade Union Associations) which has been repealed by section 406 of the new Labour Code;
- the restriction on calling a strike in rural occupations when products may perish if not immediately sold (section 228(1) of the former Labour Code).

Similarly, the requirement of a majority of 60 per cent of workers of an enterprise to call a strike (section 225(3) of the former Labour Code) has been reduced and section 244(c) of the new Labour Code requires the calling of a general assembly by the majority of workers, and section 17(2) of the Regulation on Trade Union Associations (Decree No. 55-97) requires in the general assembly a vote of half plus one of the total number of trade union members. The Committee recalls the importance it attaches to the principle that if a vote by workers before a strike can be held is required, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level (see General Survey on freedom of association and collective bargaining, 1994, paragraph 170).

In regard to the Civil Service and Administrative Profession Act (Act No. 70 of 16 March 1990, section 43(8) of which covers the right of association, the right to strike and to bargain collectively of public servants), the Committee notes the Government's statement that the provision has been suspended, but that in the absence of other provisions it is applied. The Committee requests the Government to inform it when it has adopted legislation in this respect.

Concerning the restrictions on foreign workers having access to trade union office (Decree No. 35 of the Regulation on Trade Union Associations of 1951), the Committee notes with interest the statement contained in the Government's report to the effect that they do have access to trade union office, since the principle of equality is applied with respect to the right to organize, as laid down in the Political Constitution. Moreover, the Government indicates that section 35 of the former Regulation on Trade Union Associations has been repealed by the new Regulation on Trade Union Associations (Decree No. 55-97) which no longer contains a reference to the situation of foreign workers.

Notwithstanding the latter, the Committee notes that section 21 of the new Regulation requires that members of the Executive Board of the trade union must be Nicaraguan nationals.

The Committee also notes with interest that the Government indicates in its report that federations and confederations may exercise the right to strike in accordance with the law. Nevertheless, the Committee notes that section 53 of the new Regulation on Trade Union Associations (Decree No. 55-97) provides that "in industrial disputes, federations and confederations shall limit their intervention to providing advice and moral and economic support required by striking workers". Furthermore, the Committee observes that in accordance with sections 389 and 390 of the new Labour Code, a dispute may be submitted to compulsory arbitration when 30 days have elapsed from the calling of the strike. On this point, the Committee, in particular, considers that such restrictions could be limited to the provision laid down in section 247 of the new Labour Code (the exercise of the right to strike in public services or services that are of public interest may not be extended to situations which endanger the life and personal safety of the whole or part of the population) or in a situation of acute national crisis.

Finally, section 32 of the new Regulation on Trade Union Associations lays down certain grounds on which a worker may lose his or her trade union membership, matters which should be determined by the workers themselves in their statutes and not by the public authority, namely:

1.2. non-attendance, without justifying their absence, from six consecutive sessions of the general assembly;

1.3. non-payment of dues, without explaining the reasons, for a period of three months; and

1.4. non-exercise of the trade union activities required of members over a period of six months, unless they are able to demonstrate that they were prevented from doing so, will result in general and automatic expulsion from the trade union.

The Committee hopes that the Government will continue to make every effort to bring the provisions in sections 389 and 390 of the Labour Code of 1996 and sections 21, 32 and 53 of the Regulation (Decree No. 55-97) into conformity with the requirements of the Convention and requests the Government to inform it in its next reports of any progress made in this respect.

Niger (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee noted the conclusions of the Committee on Freedom of Association concerning Case No. 1921 (see 308th Report, paragraphs 556-576).
>
> *Article 4 of the Convention* (dissolution by administrative authority). The Committee notes with concern that the Government dissolved by administrative authority the National Trade Union of Customs Officials of Niger (SNAD) on 20 March 1997 as the result of a strike the union had declared in order to obtain a reimbursement of wage arrears. In this regard, the Committee recalls that, under *Article 4* of the Convention, trade unions shall not be liable to be dissolved by administrative authority. The Committee therefore urges the Government to indicate whether the SNAD has been re-established since that time in accordance with its rights.
>
> *Articles 3 and 10* (rights of workers' organizations to strike in defence of their economic, social and professional interests). The Committee notes that for state employees the exercise of the right to strike is governed by Order No. 96-009 of 21 March 1996, section 9 of which provides that in vital and/or strategic services, a minimum service must be provided on the basis of agreement between the authorities and trade unions, but also in accordance with the application of the Convention. However, section 9 also provides that in exceptional cases arising as a result of the need to preserve the general interest, all state employees, or those of territorial authorities, may be requisitioned. In the view of the

Committee, the scope of this provision should be restricted only to cases in which a work stoppage may give rise to an acute national crisis or to public servants exercising authority in the name of the State, or also to essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see 1994 General Survey on freedom of association and collective bargaining, paragraphs 158 and 163). The Committee requests the Government to indicate in its next report the measures taken or envisaged to guarantee, in law and in practice, respect for the principles of freedom of association in this regard. It also requests the Government to provide it, in future, with copies of the requisition orders adopted in case of strikes.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Nigeria (ratification: 1960)

The Committee notes that a Commission of Inquiry was appointed at the 272nd Session of the Governing Body (June 1998) in respect of the non-observance by Nigeria of this Convention, as well as of Convention No. 98. It notes, however, that at the same session, the Governing Body decided that the commencement of the work of the Commission should be delayed for 60 days in order to allow a direct contacts mission to take place. The Committee notes that this direct contacts mission took place from 17 to 21 August 1998 and that the Governing Body at its 273rd Session (November 1998) took note of the report of the mission and decided to suspend the Commission of Inquiry. The Committee notes that according to the decision of the Governing Body, the report of the direct contacts mission has been transmitted to this Committee for examination, and it takes due note of this report.

I. 1. *The right of workers' organizations to elect officers in full freedom and to organize their administration and activities without government interference (Article 3 of the Convention).*

With reference to its previous comments, the Committee notes with satisfaction that Decrees Nos. 9 and 10 of August 1994 which dissolved the Executive Councils of the Nigerian Labour Congress (NLC) and of the National Union of Petroleum and Natural Gas Workers (NUPENG) and the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) were repealed on 11 August 1998 (with a commencement date of 20 July) by Repeal Decrees Nos. 13 and 14 respectively.

The Committee further notes a document entitled Resolutions and Communique Issued at the End of the Consultative Meeting between the Federal Government and the Representatives of the 29 Industrial Unions affiliated to the NLC held on 2 September 1998. The Committee notes that this meeting, "conscious of the urgent need to avoid a vacuum in the affairs of the Nigerian Labour Congress as a result of the repeal of Decree No. 9, and the urgent need to install democratically elected leaders of Congress", resolved to set up a presidium of six members drawn from the industrial unions and facilitated by the Permanent Secretary of the Federal Ministry of Employment, Labour and Productivity to conduct its affairs. Furthermore, it notes that this meeting agreed that the Ministry of Employment, Labour and Productivity should appoint a convenor to assist the Caretaker Committee and that the previous government-appointed sole administrator should hand over to this Caretaker Committee within two weeks. Finally, it notes that the meeting "reaffirmed the commitment of the 29 industrial unions to evolve a NLC that would be democratic and independent and urged the Federal Government to remove all obstacles towards achieving trade unions' independence and freedom".

The Committee notes with interest that it would appear that the government-appointed sole administrator is no longer managing the affairs of the NLC. Noting however that the Permanent Secretary of the Ministry of Employment, Labour and Productivity is presently acting as a facilitator to the presidium set up to conduct the NLC's affairs and that the Ministry has been requested to appoint a convenor to assist the Caretaker Committee, the Committee would like to recall the consideration set forth in its 1952 Resolution that a stable, free and independent trade union movement is an essential condition for good industrial relations and should contribute to the improvements of social conditions generally. It also recalls that *Article 3* of the Convention provides that workers' organizations shall have the right to elect their representatives in full freedom and to organize their administration and activities without interference from the public authorities. The Committee therefore requests the Government to indicate in its next report any developments which have occurred in respect of the election of NLC officers to take over from the Caretaker Committee and the manner in which it is ensured that there is no interference from the Government in the functioning of the NLC.

2. *The right to organize for academic staff unions and associations (Article 2).*

With reference to its previous comments, the Committee notes with satisfaction that the Trade Disputes (Essential Services Deregulation, Proscription and Prohibition from Participation in Trade Union Activities) Decree No. 24 and the Trade Disputes (Essential Services) (Proscription) Order 1996 of 21 August 1996 which proscribed and prohibited the participation in any trade union activities of the Non-Academic Staff Union of Educational and Associated Institutions (NASU), the Academic Staff Union of Universities and the Senior Staff Association of Universities, Teaching Hospital, Research Institutes and Associated Institutions and dissolved the National Executive Council and the Branch Executive Councils operating within any university in Nigeria were repealed on 11 August 1998 (with a commencement date of 20 July) by Repeal Decree No. 12.

II. 1. *The right of workers to form organizations of their own choosing without previous authorization (Article 2)*

(a) The restructuring of industrial unions: Decree No. 4 of 1996. The Committee recalls that its previous comments concerned the restructuring of the previous 41 registered industrial unions into 29 trade unions affiliated to the Central Labour Organisation (named in the law as the Nigerian Labour Congress (NLC)) through the promulgation of the Trade Unions (Amendment) Decree No. 4 of 5 January 1996. It had observed that this Decree provided for the establishment of a determined number of trade unions for each occupational category according to a pre-established list further confirming the system of trade union monopoly established in section 33 of the Trade Unions Act of 1973, as amended. It had recalled that, under *Article 2* of the Convention, workers and employers should have the right to establish and join organizations of their own choosing. Noting from the direct contacts mission report that the Government has expressed the willingness to re-examine the whole trade union question in the country, including through revisiting Decree No. 4, in order to promote the observance of this Convention, the Committee requests the Government to indicate the measures envisaged to repeal this Decree and to amend the Trade Unions Act in order to ensure full compliance with *Article 2* of the Convention.

(b) Restrictions on the right to organize by the Trade Unions Act, as amended. In its previous comments, the Committee had pointed out that there were a number of discrepancies in the Trade Unions Act, as amended, in respect of the right for workers to form organizations of their own choosing without previous authorization. The Committee recalls the need to amend section 3(1) and (2) which sets the excessively high requirement of 50 workers to form a trade union and grants the Minister excessive control over the registration of trade unions. It further recalls the need to amend section 11 which denies the right to organize to certain categories of employees in the public service, such as the Customs and Excise Department, the Immigration Department, the Prison Services, the Nigerian Security Printing and Minting Company, the Central Bank of Nigeria and Nigerian

External Telecommunications, contrary to *Article 2* of the Convention. The Committee requests the Government to indicate the measures envisaged to amend the Trade Unions Act in respect of these matters in order to ensure full compliance with *Article 2*.

2. *The right to elect officers in full freedom, to organize their administration and activities and to formulate programmes without government interference (Article 3)*

(a) Conditions of eligibility. In its previous comments, the Committee had noted the need to amend sections 7 and 8 of the Trade Unions (Amendment) (No. 2) Decree No. 26 of 1996 which require officers of a trade union to be card-carrying members who in turn must be engaged in the trade or industry which the union represents under punishment of a fine and/or five years' imprisonment. It recalls in this respect that provisions requiring members of trade unions to belong to the occupation concerned coupled with a requirement that the officers of the organization be chosen from among its members entails a serious risk of interference by the employer through the dismissal of trade union officers with the aim of depriving them of their trade union office and is not in conformity with the organization's right to elect representatives in full freedom as it prevents qualified persons, such as full-time union officers or pensioners, from carrying out union duties or by depriving unions of the benefit of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks (see General Survey on freedom of association and collective bargaining, 1994, paragraph 117). Noting the willingness of the Government to review the whole trade union question, including Decree No. 26, the Committee requests the Government to indicate the measures envisaged to amend these provisions either by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of an organization.

(b) The imposition of compulsory arbitration. In its previous comments, the Committee had recalled the need to amend the Trade Disputes Act, as amended, in so far as it permits the exercise of the right to strike to be restricted by means of imposing compulsory arbitration, under penalty of a fine or six months' imprisonment for any person failing to comply with a final award issued by the National Industrial Court. The Committee recalled the need to limit any possibility of imposing compulsory arbitration awards in respect of collective disputes to essential services in the strict sense of the term, that is to say, those the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or to public servants exercising authority in the name of the State. It requests the Government to indicate in its next report, any measures envisaged in this respect.

(c) The powers of the Registrar to supervise trade union accounts. In its previous comments, the Committee had noted that sections 39 and 40 of the Trade Unions Act conferred on the Registrar broad powers to supervise the union accounts at any time and recalled the importance it placed on the right of workers' organizations to organize their administration and activities without interference from the public authorities. The Committee observed that supervision should be limited to the submission by a trade union of periodic reports and that interference should only be permitted in the case of lodged complaints and on the condition that there be a right to appeal to the competent authority. The Committee requests the Government to indicate the measures envisaged to amend these sections of the Trade Unions Act in order to ensure full conformity with the Convention in this regard.

3. *Cancellation of registration by administrative authority (Article 4)*

In its previous comments, the Committee had noted with concern that section 3 of the Trade Unions (Amendment) (No. 2) Decree No. 26 further extended the Minister's control over trade union registration by providing that decisions to cancel registration may only be appealed to the Minister. The Committee noted this with particular concern in the light of further amendments made in this Decree which enabled the Minister, due to overriding public interest, to revoke the certificate of registration of any trade union specified in the Schedule to the Act (section 3) and under section 7, to revoke registration in the event that a non-card-carrying member assumes a functional role in any of the policy or decision-making organs.

Recalling that according to *Article 4* of Convention No. 87, workers' and employers' organizations should not be liable to dissolution by administrative authority, the Committee requests the Government to amend Decree No. 26 by repealing the absolute authority of the Minister to cancel registration and by enabling workers and their organizations to appeal to the courts concerning any cancellation of registration.

4. *International affiliation (Articles 5 and 6 of the Convention)*

In its previous comments, the Committee recalled the need to repeal the Trade Unions (International Affiliation) Decree No. 29 of 1996 which annulled the international affiliation of the Central Labour Organization and all registered trade unions with any international labour organization or trade secretariat other than the Organization of African Trade Union Unity, the Organization of Trade Unions for West Africa and any other international labour organization for which a specific application had been made and approval given by the Provisional Ruling Council. Under this Decree, any subsequent international affiliation is subject to prior approval and any contravention may be punishable by up to five years' imprisonment and the certificate of registration of the offending trade union shall be revoked. Recalling that *Articles 5 and 6* provide that workers' organizations shall have the right to affiliate with the international organization of their own choosing, and noting from the direct contacts mission report the Government's indication that the matter of this Decree could also be addressed, the Committee requests the Government to indicate the measures envisaged to amend the legislation in order to ensure full conformity with these Articles of the Convention.

Norway (ratification: 1949)

The Committee notes the information contained in the Government's report, as well as the comments made by the Independent Unions' Forum (UFF).

Articles 3 and 10 of the Convention. In its previous comments, the Committee had recalled the need to remove the possibility of imposing legislative intervention in the right to strike in different sectors of the economy other than essential services in the strict sense of the term and, in particular in the oil industry which in no way can be considered to be an essential service in the strict sense of the term. It noted the Government's indication that the Labour Law Council was working on a proposal for a new Labour Disputes Act. The Committee expressed its hope that the Bill to be proposed would be in full conformity with the principles of freedom of association and would remove any restrictions imposed on the right of workers' organizations to organize their activities and formulate their programmes for furthering and defending their interests, without interference from the public authorities, through the use of compulsory arbitration.

The Committee had further noted comments from the Federation of Oil Workers' Trade Union (OFS) indicating that the suggestions made by the Labour Law Council entitled "principles for a new Labour Disputes Act" were in contradiction with the principles of the Convention and requested the Government to reply to these comments and to provide information on any further developments in respect of the proposals made by the Labour Law Council.

The Committee now notes the comments of the UFF which was founded in 1995 as a reaction to the proposals being developed by the Labour Law Council and represents approximately 45,000 members. In particular, the UFF indicates the strong opposition of numerous independent unions to these proposals.

The Committee notes the Government's indication that an outline of proposed changes was circulated around the country so that all organizations concerned would have the opportunity to comment. According to the Government, the hearing showed heavy opposition to the proposals from the Council. The Government adds that it is still too early to indicate the outcome of the proposal from the Labour Law Council and therefore too early to comment on any eventual incompatibility with the Convention.

Taking due note of the Government's indication that, in the current context, it is not possible to envisage how the Labour Law Council proposals might be further developed, the Committee requests the Government to continue to keep it informed of any further developments in this regard. While acknowledging that, for a number of years, the Government has not proposed any legislative intervention in the exercise of industrial action, the Committee must however continue to recall the need to bring its legislation into fuller conformity with the principles of freedom of association in relation to the right to strike and to limit any possibility of imposing legislative intervention to essential services in the strict sense of the term, that is to say, those the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or to public servants exercising authority in the name of the State. It requests the Government to indicate in its next report any measures envisaged in this respect.

Pakistan (ratification: 1951)

The Committee notes the information provided by the Government in its report. It also notes the statement of the Government representative to the 1998 Conference Committee on the Application of Standards and the discussion which took place therein.

1. *Employees in civil aviation and at the Pakistan Television and Broadcasting Corporations.* With reference to its previous comments, the Committee takes note of the Supreme Court judgement in respect of the Union of Civil Aviation Employees, as well as the employees of the Pakistan Television and Broadcasting Corporations (PTVC and PBC), which restores the rights of these employees to organize and to bargain collectively. It further notes the Government's indication that this judgement has been honoured by the bodies concerned and trade union activities have been restored in respect of these employees. The Committee notes with regret, however, from paragraph 33 of this judgement that these employees cannot go on strike or take other industrial action in the absence of statutory backing.

The Committee must once again recall in this regard that the right to strike, may only be restricted in respect of essential services, that is services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, for public servants exercising authority in the name of the State and in cases of acute national crisis. It requests the Government to indicate the measures taken or envisaged to ensure that employees of the civil aviation authority and of the Pakistan Television and Broadcasting Corporations, to the extent that they do not fall within the above-mentioned definition of essential services in the strict sense of the term, may take industrial action without penalty. The Government may consider in this regard the establishment, in consultation with the workers' organizations concerned, of a negotiated minimum service to meet basic needs or to ensure that facilities are operated safely.

2. *Amendment to the Banking Companies Ordinance.* The Committee notes the confirmation in the Government's report that the amendment to section 27-B of the Banking Companies Ordinance, 1962, providing that only employees of the bank in question can

become members or officers of the bank union was made to control the disruptive activities in the banking sector in the public interest and to maintain the viability of the economy. The Government asserts that this section does not bar trade union activities nor does it in any way interfere with such activities.

While noting the Government's request to consider the special circumstances for Pakistan banks in this regard, the Committee must recall that provisions which require all candidates for trade union office to belong to the respective occupation, enterprise or production are contrary to the guarantees set forth in *Article 3 of the Convention* and infringe the organization's right to elect representatives in full freedom by preventing qualified persons, such as full-time union officers or pensioners, from carrying out union duties or by depriving unions of the benefit of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks (see General Survey on freedom of association and collective bargaining, 1994, paragraph 117). The Committee further notes with great concern that section 27-B(2) provides that a violation of this section is punishable with up to three years' imprisonment. Recalling that the legislation may be made more flexible either by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of an organization, the Committee expresses the firm hope that the Government will give serious consideration to amending this provision so as to ensure that workers have the right to elect their representatives in full freedom along the lines mentioned above.

3. *Export processing zones.* With reference to its previous comments concerning the denial of the rights guaranteed by the Convention for workers in export processing zones (section 25 of the Export Processing Zones Authority Ordinance, 1980, and section 4 of the Export Processing Zone (Control of Employment) Rules, 1982), the Committee notes the statement in the Government's report that this is not a permanent feature and that these exemptions will be withdrawn by the year 2000. The Government adds that express agreements with investors which provide reciprocal obligations are to be honoured and make it unlikely that the Export Processing Zones Authority provision will be lifted before 2001. The Committee recalls that the provisions of this Convention should apply to all workers, without distinction, including workers in export processing zones, and requests the Government to indicate in its next report the progress made in ensuring the rights guaranteed by this Convention to workers in EPZs.

4. *Higher-level public servants.* With reference to its previous comments concerning the exclusion of public servants of Grade 16 and above from the scope of the Industrial Relations Ordinance (IRO), 1969 (section 2(viii) (special provision)), the Committee notes the statement in the Government's report that this Convention needs to be read with Convention No. 98 and that such workers are exempted from the latter. The Committee must recall, however, that under *Article 2* of this Convention, all workers, without distinction whatsoever, shall have the right to form and join the organization of their own choosing. The Committee further recalls that it has considered it to be admissible for first-level organizations of public servants to be limited to that category of workers, provided that their organizations are not restricted to any particular ministry, department or service and that they may freely join federations and confederations of their own choosing. As concerns the capacity of these workers as supervisors, the Committee recalls that restrictions may be placed on the right to organize of managerial or supervisory staff provided that such workers have the right to form their own organizations to defend their interests and that the category of executive and managerial staff is not so broadly defined as to weaken the organizations of other workers by depriving them of a substantial proportion of their actual or potential membership (see General Survey, op. cit., paragraphs

86-88). It therefore expresses the firm hope that the Government will take the necessary measures to ensure that public servants of Grade 16 and above enjoy the right to organize in accordance with the above-mentioned principles.

5. *Public utility services.* As concerns the possibility for the government authorities to prohibit strikes in public utility services (sections 32(2) and 33(1) of the IRO), the Committee notes the Government's indication that such restrictions are necessary to check strikes at some point of time and which may be of national importance. The Committee requests the Government to indicate whether this authority has been used in recent years and, if so, in respect of which public utilities.

6. *Definition of "workman" in the IRO and the use of artificial promotions.* As concerns the exclusion from the definition of workers in the IRO, and thus of the right to join a trade union, of persons employed in an administrative or managerial capacity whose wages exceed 800 rupees per month (when the national minimum wage was fixed in 1995 at 1500), the Committee notes the Government's indication of its cognizance of this matter and its statement that an amendment is only possible with interministerial and tripartite consensus. According to the Government, workers have the right to form trade unions regardless of the upper wage limit which is only relevant to those working in a supervisory capacity. The Committee recalls in this respect however its previous comments concerning artificial promotions used as an anti-union tactic in the banking and finance sector. While noting the Government's indication that the State Bank of Pakistan has reported that no artificial promotions have taken place in five major banks and that workers have the right to refuse such promotions, the Committee must still express its serious concern that the definition of worker in the IRO may give rise to anti-union acts on the part of the employer in order to limit the strength of unions in their enterprise. It expresses the firm hope that the Government will be in a position in its next report to indicate the progress made in amending this definition so as to ensure that only those with true managerial and supervisory capacity may be excluded from workers' unions.

7. *Hospital workers.* For several years now the Committee has raised its concern in respect of the denial of the right to form trade unions for employees in public and private sector hospitals. In its latest report, the Government indicates that the abuse of authority acquired as a result of trade unionism particularly in the case of hospitals is detrimental to the full and timely care of patients. On numerous occasions the Committee has recalled that the right to organize for hospital workers does not necessarily imply the recognition of the right to strike for such workers who may be restricted in this regard as an essential service in the strict sense of the term. The Committee therefore expresses the firm hope that the Government will give serious consideration to ensuring, in the very near future, the right to organize for employees in public and private sector hospitals.

8. *Forestry and railway workers.* As concerns its comments in respect of the denial of the right to organize of forestry workers and railway employees, the Committee notes the Government's indication that while forestry workers do not have the right to form trade unions under the IRO, they do have the right to form associations. Being declared as state employees, however, they are exempted from undertaking trade union activities within the meaning of Convention No. 98. As for railway workers, the Government states that only the 18 sections of railway lines which were classified as defence installations are excluded from the IRO. The Committee must once again recall its previous comments in which it indicated that railway workers could not be considered to be part of the armed forces for the permissible exclusion under *Article 9*. It expresses the firm hope that the Government will take the necessary measures in the near future to ensure the full right to organize for these workers, as well as the rights of their organizations to carry out their administration and

activities and formulate their programmes without government interference, in accordance with *Articles 2 and 3.*

9. *List of essential services.* As concerns the Pakistan Essential Services (Maintenance) Act, 1952, the Committee notes from the Government's report that the list of services prohibited from strike by virtue of this Act has been reduced to five, three of which concern the supply of electrical power. The Committee requests the Government to provide a copy of the relevant text making enforceable this new restricted list and to give further consideration to deleting from this list the Pakistan Security Printing Corporation and Security Papers Limited and Dr. Khan Research Laboratories insofar as they are not essential services in the strict sense of the term. The Government is also requested to indicate in its next report the services currently covered by the 1958 West Pakistan Essential Services (Maintenance) Act and the Punjab and Sindh Essential Services (Maintenance) Acts.

The Committee must recall that it has been making comments on the above-mentioned discrepancies with the Convention for many years now. The Committee expressed the firmest hope that the Government will take the necessary measures in the very near future to bring the legislation into conformity with the Convention on these matters and requests it to indicate in its next report the progress made in this regard.

Panama (ratification: 1958)

The Committee notes the Government's report and the Committee on Freedom of Association's conclusions and recommendations in Case No. 1931 (Panama), which was approved by the Governing Body at its 272nd Session in June 1998, and which refers to the restrictions on the right of employers and their organizations provided for in the law (210th Report, paragraphs 493-507).

A. The Committee recalls that its previous comments referred to the following provisions:

- section 174 and the final paragraph of section 178 of Act No. 9 ("establishing and regulating administrative careers"), of 1994, which lays down respectively that there shall not be more than one association in an institution, and that associations may have provincial or regional chapters, but can have no more than one chapter per province;
- section 41 of Act No. 44 of 1995 (amending section 344 of the Labour Code) which requires an excessively high number of members to establish an employers' occupational organization (10) and an equally high number to establish a workers' organization (40) at the enterprise level;
- section 64 of the Constitution which requires Panamanian nationality to serve on the Executive Board of a trade union.

In regard to the prohibition of more than one public servants' association in an institution and more than one chapter per province, the Committee notes the Government's statement in its report setting out the reasons for such provisions, including the reduction of the number of public servants. Nevertheless, the Committee emphasizes again that any system of trade union unity or monopoly, implicitly or explicitly imposed by law, is contrary to the principle that workers and employers shall have the right to establish organizations of their choosing as laid down in *Article 2 of the Convention.* On this point, the Committee again requests the Government to take the necessary measures to amend its legislation so that workers have the right to establish and join trade union organizations of their own choosing, should they so wish.

As regards the number of members required to establish an employers' or a workers' organization, the Committee notes the Government's statement to the effect that Act No. 44

of 1995 issuing this provision, was the result of a tripartite consensus between the Government and social partners. Notwithstanding the latter, the Government has noted the Committee's observations.

In this respect, the Committee again requests the Government to take the necessary measures to reduce the number of members required to establish an organization of employers to fewer than ten and to further reduce the minimum number of 40 workers required to establish an occupational organization at the enterprise level, particularly if this requirement prevents collective bargaining in smaller enterprises.

With regard to the requirement of Panamanian nationality to serve on the Executive Board of a trade union, the Committee notes the Government's statement, despite the fact that constitutional reforms require a special procedure, the Government has noted the Committee's comments on this point. The Committee again hopes that the Government will adopt the necessary measures to repeal this provision in the Political Constitution.

B. *Case No. 1931.* As regards lockouts in enterprises, establishments and businesses in the event of a strike, as provided in sections 493(1) and 497 of the Labour Code (Case No. 1931), the Committee considers that in the case of a legal strike such provisions go beyond the protection of the right to strike and may restrict the freedom to work of non-striking workers, ignoring the basic needs of the enterprise (maintenance of premises, accident prevention and the right of entrepreneurs and managers to enter the premises and to exercise their activities). In such conditions, the Committee of Experts, in the same way as the Committee on Freedom of Association, requests the Government to take measures to repeal the above provisions set out in sections 493(1) and 497 of the Labour Code.

As regards the possibility of workers unilaterally submitting collective disputes to arbitration (section 452(2) of the Labour Code), whose findings shall be legally binding on the parties (section 470 of the Labour Code), the Committee recalls that arbitration imposed at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements and thus, the autonomy of bargaining partners. Nevertheless, an exception could be made in the cases in which provisions exist, for instance, allowing workers' organizations to initiate such a procedure for the conclusion of a first collective agreement (see General Survey on freedom of association and collective bargaining, 1994, paragraph 257).

In this respect, the Committee requests the Government to take the necessary measures to amend section 452(2) of the Labour Code to reflect the above-noted principle.

The Committee again hopes that the Government will continue to take measures to bring the legislation into full conformity with the provisions of the Convention and requests the Government to inform it in its next report of any progress made in this respect.

The Committee is addressing a request directly to the Government on other points.

Paraguay (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the Government's report and Act No. 496 of 25 August 1995 which amends, extends and repeals various provisions of the existing Labour Code (Act No. 213/93) and recalls that its previous comments referred to:
>
> - the exclusion from the scope of the new Labour Code, 1993, of public servants, be they from the central administration or from decentralized units (section 2 of the Code);
> - the requirement of 300 workers as the minimum number to form a trade union (section 292);

- the requirement of being an active worker in the enterprise and an active worker of the trade union in order to be eligible for trade union office (sections 298(a) and 293(d), respectively);
- the restriction on the free election of trade union representatives (Decree No. 16769, which contains detailed and meticulous regulation of the trade union electoral process);
- the referral of collective disputes to compulsory arbitration and the dismissal of workers who have stopped work before the conciliation and compulsory arbitration procedures have been exhausted (sections 284, 291, 293, 302 and 308 of the Code of Labour Procedure).

With regard to the exclusion from the scope of the Labour Code, 1993, of public servants, the Committee notes with interest that section 412 (transitional provision) of Act No. 496 of 25 August 1995 extends application of the Labour Code provisions relating to the right to form trade unions and to strike to workers in the public sector until such time as a special law governs the subject. Similarly it notes with interest that the Bill on the Status of Civil Servants and Public Employees, section 44(m) and (n), allows civil servants and public employees to form trade unions and to participate in strikes with the restrictions laid down in the Constitution and by the law, respectively, in accordance with article 45(d), (e) and (f), and that the National Constitution and the Labour Code will regulate matters pertaining to the right to form trade unions, to conclude collective labour agreements and to the right to strike and that section of the Labour Code amended in 1995 abrogates Act No. 200 on the status of public officials, sections 31 and 36 of which allowed public servants to form associations only for cultural and social purposes.

The Committee expresses the firm hope that in the near future the Act on the Status of Civil Servants and Public Employees will be approved allowing public servants to form associations for the promotion and defence of their professional interests in accordance with *Article 2 of the Convention*.

With regard to Decree No. 16769 which restricts free election of trade union representatives and was declared unconstitutional by the Supreme Court, as it is contrary to article 96 of the National Constitution and is therefore null and void, the Committee again asks the Government to inform it on the adoption of any text expressly repealing this instrument.

In regard to sections 284, 291, 293, 302 and 308 of the Code of Labour Procedure which refers collective disputes to compulsory arbitration and provides for the dismissal of workers who have stopped work before the conciliation and compulsory arbitration procedures have been exhausted, the Committee also notes with interest that, according to information from the Government, first, sections 284 and 291 are no longer applicable since they are contrary to article 97 of the National Constitution which lays down arbitration as optional. Secondly, it also notes with interest that according to the Government's report, sections 293, 302 and 308 of the Code, relating to conciliation and arbitration procedures, apply only when the parties have opted for arbitration; otherwise they are not valid since their application would be unconstitutional as arbitration is voluntary. The Committee requests the Government to inform it also on the adoption of any text repealing or amending these provisions.

The Committee regrets to note that the Government has not replied to its comments on section 292 of the Code relating to the requirement of 300 workers as the minimum number to form a trade union, nor on articles 298(a) and 293(d) of the Code on the requirement of being an active worker in the enterprise and an active member of the trade union in order to be eligible for trade union office, respectively, and it therefore once again asks the Government, in consultation with workers and management, to take measures to amend legislation in order to reduce to a reasonable level the excessive number of workers required to form a trade union and to allow workers to elect their leaders freely. On this matter, the Committee reminds the Government that provisions which require all candidates for trade union office to belong to the occupation, enterprise, or production unit represented by the organization or to be actually employed in this occupation at the time of their candidature are contrary to the guarantees laid down in the Convention (see General Survey on freedom of association and collective bargaining, 1994, paragraph 117).

The Committee again asks the Government to inform it in its next report of the measures adopted to bring legislation into conformity with the Convention and of progress in the approval of the Act on the Status of Civil Servants and Public Employees mentioned by the Government and to send it a copy of the new law once it is approved.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

The Committee is also addressing a direct request on certain points to the Government.

Peru (ratification: 1960)

The Committee notes the Government's report and recalls its previous comments which refer to the various provisions of the Industrial Relations Act of 1992 and its Regulations, namely:

- the denial of trade union membership during the probation period (section 12(c) of the Act);
- the requirement of a high number of workers (100) to form trade unions by branch of activity, occupation and for various occupations (section 14);
- the requirement that workers must be active members of the trade union (section 24(b)) and must have been in the service of the enterprise for a minimum of one year (section 24(c)) to become eligible for trade union office (section 24);
- the prohibition of political activities for trade unions (section 11(a));
- the excessive restrictions on the right of workers to call a strike, in particular sections 73(a) and (b), 67 and 83(g) and (j);
- the obligation of trade unions to compile reports which may be requested by the labour authorities (section 10(f));
- the power of the labour authority to cancel the registration of a trade union (section 20 of the Act) and the requirement that the trade union must wait six months after the cause of cancellation has been remedied before reapplying for registration (section 24 of the Regulation);
- the prohibition of federations and confederations of the public services to form part of organizations which represent other categories of workers (section 19 of the Presidential Decree No. 003-82-PCM).

The Committee notes that a new text has been drafted by the Committee on Labour and Social Security of the National Congress to amend the Industrial Relations Act entitled the "Amended Text of the Industrial Relations Act", a copy of which was transmitted to the ILO for comment.

In this respect, the Committee notes with interest that the Amended Text in question retains almost all of the positive amendments contained in the previous Bill which referred to the following provisions:

- section 12(c) of the Act, denying trade union membership during the probation period is repealed;
- section 7 of the Bill reducing the number of workers required to form trade unions by branch of activity, occupation or for various occupations from 100 to 50 (section 14 of the Act in force);

- the requirement that workers must be active members of the trade union (section 24(b)) and must have been in the service of the enterprise for a minimum of one year (section 24(c)) to become eligible for trade union office (section 24) is deleted;
- the requirement for an absolute majority to call a strike (section 73(b)) is deleted;
- section 67 of the Act respecting compulsory arbitration in the public services is repealed; section 83(g) of the same Act which lays down that essential services include the *transport services*, section 80(g) of the draft text limits the *application of the law to the simple requirement of finishing the journey begun*; section 83(j) of the same Act laying down essential services as those whose interruption creates a serious or imminent risk to persons or *goods* is repealed;
- the labour authority's supervision of trade union activities (section 10(f) of the Act in force) is deleted;
- the power of the labour authority to cancel the registration of a trade union (section 20 of the Act in force) is deleted.

Nevertheless, the Committee notes that the Amended Text does not take into consideration the following provisions, which were the subject of the Committee of Experts' comments:

- the prohibition of political activities (section 11(a) of the Act in force) for trade unions. In this respect, the previous Bill improved the text by adding "*without impairment of freedom of opinion as to the social and economic policy of the Government*", thereby removing the restriction on the right to strike laid down in section 73(a) of the Act in force;
- the draft text does not envisage the possibility of federations and confederation of public servants to join confederations which also group together organizations from the private sector (see General Survey on freedom of association and collective bargaining, 1994, paragraph 193).

The Committee expresses the firm hope that the Amended Text of the Industrial Relations Act will take into consideration all the comments made by the Committee and that these will be adopted shortly. The Committee requests the Government to inform it in its next report of any progress achieved in this respect and to provide a copy of the text when it has been adopted.

Moreover, the Committee is addressing a direct request on the various provisions of the Amended Text of the Industrial Relations Act which may raise difficulties in complying with the Convention, namely the provisions in respect of trade union activities, the establishment and activities of federations and confederations and the restrictions on the calling of a strike.

Philippines (ratification: 1953)

The Committee notes the information provided in the Government's report, including the copy of Department Order No. 09, attached thereto, which took effect on 21 June 1997 and amends the rules implementing Book V of the Labor Code.

The Committee notes that it has previously commented upon the following discrepancies between the national legislation and the requirements of the Convention:

- compulsory arbitration in industries "indispensable to the national interest" (Labor Code, section 263);
- disproportionate sanctions for participation in illegal strikes (Labor Code sections 264(a) and 272(a); Penal Code section 146);

- the registration requirement that at least 20 per cent of workers in a bargaining unit are members of a union (Labor Code section 234(c));
- the requirement of ten unions to establish a federation (section 237(a));
- the restriction on the right of aliens to engage in trade union activities (sections 269 and 272(b))
- the requirement that officers of a union operating in an enterprise be employed in that enterprise (Rule II(3)(f) of Book V implementing the Labor Code).

Compulsory arbitration

In its previous comments, the Committee had noted that section 263(g) of the Labor Code, as amended, permits the Secretary of Labor and Employment to submit a dispute to compulsory arbitration, thus bringing an end to a strike, in situations going beyond essential services or an acute national crisis. The provision endows the Secretary with such authority where he or she is of the opinion that there exists "a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest". The provision goes on to empower the President to determine "the industries that, in his opinion, are indispensable to the national interest", and allows him to intervene at any time and assume jurisdiction "over any such labor dispute in order to settle or terminate the same". The Government states in reply that the President's power to intervene in strikes is not without limitation since such intervention may only be exercised regarding industries indispensable to the national interest. While noting the Government's statement, the Committee must again point out that this provision of the Labor Code is drafted in such general terms that it could be applied in situations extending well beyond those in which strike action may be limited or prohibited in conformity with the Convention. It recalls that such intervention is permissible only in the following cases: (i) in essential services, i.e. those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (ii) in acute national crises to the extent necessary to meet the requirements of the situation and only for a limited period; and (iii) concerning public servants exercising authority in the name of the State.

Given the importance of the right to strike as one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests, and that the criteria for restricting strikes in section 263(g) goes beyond the three situations outlined above, the Committee urges the Government to take measures to amend the legislation to bring it into conformity with the requirements of the Convention.

Sanctions for striking

The Committee notes that it has been calling on the Government for a number of years to review and amend sections 264(a) and 272(a) of the Labor Code, and section 146 of the Penal Code which impose sanctions and penalties for participation in a strike. With respect to section 264(a), which permits a union officer to be dismissed for participation in an illegal strike, the Government again indicates that the provision does not apply to a union officer participating in a legal strike, and asserts that the provision is aimed at "improving the conditions of labor and establishing peace". The Government states further that section 272(a), providing for a fine and/or imprisonment of not less than three months and not more than three years, applies only in the limited circumstances set out in section 264. The Committee recalls, however, that sanctions for strike action should be possible *only* where the prohibitions in question are in conformity with the principles of freedom of association (see General Survey on freedom of association and collective bargaining, 1994, paragraph 177). As noted by the Committee and acknowledged by the Government in previous reports, some of the limitations on strike action contained in the legislation are not in conformity with the principles arising from the Convention; therefore, any sanctions imposed for the violation of such provisions are equally incompatible with the Convention.

With respect to section 146 of the Penal Code, the Government indicates that it addresses two types of illegal assemblies: (i) a meeting attended by armed persons for the purpose of committing any crime; (ii) a meeting where the audience is incited to the commission of treason, rebellion, sedition or assault. It states further that the reference in the section to "meeting" should not be construed as including picketing unless such picketing is attended by armed persons for the purpose of committing any crime, or it incites the audience to the commission of treason, rebellion, sedition or assault. The Committee is again obliged to point out that paragraph 3 of section 146 refers to participation in "any meeting which is held for propaganda purposes against the Government...", and that "meeting" is defined to include "picketing of labour groups and similar group actions". While noting the point made by the Government in its report that a person punished under section 272 of the Labor Code will not be subject to prosecution under the Penal Code, the Committee nevertheless remains of the view that the sanctions for strike action (including picketing) provided under the Labor Code and the Penal Code are unduly harsh, and not proportionate to the offences, in particular, penalties of imprisonment should not be imposed in the case of peaceful strikes. The Committee, therefore, again requests the Government to amend the provisions of the Penal Code and the Labor Code to ensure that the sanctions imposed for illegal strikes are commensurate with the nature of the offence.

Limitations on the right to join and form organizations

In its previous comments, the Committee noted the following discrepancies between the Labor Code and *Articles 2 and 5 of the Convention*: (i) the requirement for registration that at least 20 per cent of the workers in a bargaining unit are members of a union (section 234(c)); (ii) the requirement of too high a number of unions (ten) to establish a federation (section 237(a)); and (iii) the prohibition of aliens — other than those with valid permits if the same rights are granted to Filipino workers in the country of origin of the alien worker — from engaging in any trade union activity (section 269) under penalty of deportation (section 272(b)). The Committee notes with regret that these restrictions have recently been confirmed by virtue of Department Order No. 09 amending the rules implementing Book V of the Labour Code, in particular Rule III(2)(b), Rules I(1)(m) and III(2)(II), and Rule II(2) respectively. Given the importance of the right of workers to establish and join organizations of their own choosing and of workers' organizations to establish and join federations and confederations without previous authorization, the Committee urges the Government to consider reviewing and amending the provisions of the Labor Code and the Rules implementing the Labor Code, to bring them into conformity with the clear requirements of *Articles 2 and 5* of the Convention.

Limitations on the right to elect representatives in full freedom

In its previous comments, the Committee drew attention to Rule II(3)(f) of Book V implementing the Labor Code, which provides that officers of a union operating in an enterprise must be employed in that enterprise. In addition, under the Labour Code, the term "employee" includes "any individual whose work has ceased as a result of or in connection with any current labour dispute or because of any unfair labour practice if he has not obtained any other substantially equivalent and regular employment". The Committee had noted that such legislation entails the risk of interference by the employer through the dismissal of trade union leaders for exercising legitimate trade union activities with the result (or even the intention) of depriving them in the future of holding a position as a trade union officer, and requested the Government to take steps to render the requirement more flexible so as to allow, for example, a reasonable proportion of union officers to come from outside the particular enterprise or to admit as candidates persons who have previously been employed in the occupation or enterprise concerned (see General Survey, op. cit., paragraph 117). In its report, the Government notes with interest this recommendation and advises that it will inform the Committee of the actions taken in consideration of the recommendation. The Committee takes due note of this statement, and expresses the hope that it implies a desire on the part of the Government to bring this provision into conformity with the requirements of *Article 3* of the Convention by allowing organizations to elect their representatives in full freedom.

The Committee expresses the firm hope that the Government will, without further delay, take measures to bring the legislation into fuller conformity with the requirements of the Convention, and requests to be kept informed of any measures taken or envisaged in this regard.

The Committee is also addressing a request directly to the Government.

Poland (ratification: 1957)

The Committee notes the information supplied by the Government in its report.

1. *Articles 2 and 3 of the Convention. Right of workers without distinction whatsoever to establish and join organizations.* With reference to its previous comments and the comments of the "Solidarnosc" trade union, the Committee noted that the Government had given assurances that a Bill was being examined to amend the Trade Union Act of 23 May 1991 which imposed restrictions on the right to organize of officials holding senior posts (sections 40 and 42), so as to ensure that this category of public servants had the right to form and join organizations for the defence of their interests. In this regard, the Committee notes with satisfaction the Act of 21 May 1997 on the amendment of the Act concerning the Supreme Chamber of Control and on the change of the Trade Union Act which provides, in its article 1, that article 86 of the Act of 23 December 1994 on the Supreme Chamber of Control now reads as follows: "1. Employees of the Supreme Chamber of Control, with the exception of the president, deputy presidents, director-general, directors and deputy directors of organizational units and advisers to the President, have the right to associate in trade unions;" and that "2. Employees who supervise or perform control functions may become members of a trade union associating exclusively with employees of the Supreme Chamber of Control. In the Supreme Chamber of Control only trade unions may function with associates employees, referred to in the previous sentence."

In addition, the Committee notes the Government's statement according to which legislative work is being carried out in order to draft a new Act concerning the civil service, which would not provide for the prohibition of the trade union membership of civil servants (even at higher levels). The Committee requests the Government to send it a copy of the new Act as soon as it is adopted.

2. *Trade unions' assets.* Referring to the need to amend the Act of 25 October 1990, entered into force in August 1996, concerning the restitution of trade union assets, the Committee notes the Government's statement that the Minister of Labour and Social Policy prepared and submitted on 29 June 1998, for interministerial consultations, the necessary draft amendments of the Act and that this draft text should be examined by the Council of Ministers in autumn 1998. The Committee expresses the hope that these issues will be resolved in the near future so that the trade unions may exercise their activities effectively, in full independence and on an equal footing. In addition, the Committee requests the Government to send it a copy of the relevant text when it is adopted.

3. *Articles 3, 5 and 6* of the Convention. *Representativeness of trade union organizations*. Referring to its previous comments with regard to the need to amend the provisions of trade union legislation on the representative nature of trade union organizations, the Committee notes the Government's information that the criteria of representativeness will be predetermined and impartial. The Committee asks the Government to keep it informed in its next reports of any developments in this field.

Portugal (ratification: 1977)

The Committee takes note of the information provided by the Government in its report and recalls that its previous comments referred to the following provisions:

- section 8(2) and (3) of Legislative Decree No. 215/B/75, which requires 10 per cent, or 2,000 workers, to establish a trade union, and one-third of the trade unions of a regional category to establish a federation; and
- section 7(2) and (3) of Legislative Decree No. 215/C/75, which requires one-quarter of the employers concerned but not more than 20 individuals in order to establish an employers' organization and a minimum of 30 per cent of employers' associations to establish a group or federation.

The Committee notes that the Government indicates again that, following the ruling by the Advisory Council of the Attorney-General of the Republic that these provisions were contrary to the Constitution and other international instruments relating to freedom of association, they are no longer applied in practice. The Government also indicates that this principle was confirmed by the Ministry of Labour on 6 June 1979 and is binding.

The Committee also notes that according to the Government's information, the international instruments ratified by the Government are legally binding, form part of internal law and have the same force as ordinary legislation. In this regard, the Government emphasizes that section 8(2) and (3) of Legislative Decree No. 215/B/75 and section 7(2) and (3) of Legislative Decree No. 215/C/75 are regarded as implicitly repealed, which is equivalent to an explicit repeal under section 7 of the Civil Code.

In this connection, the Committee notes that, according to the Government, both the General Confederation of Portuguese Workers and the Confederation of Portuguese Industry have indicated, with reference to the present report, that there are in practice no obstacles to the establishment of workers' and employers' organizations resulting from the provisions in question. Finally, notwithstanding the foregoing remarks, the Government confirms that it would be appropriate to repeal such provisions of trade union law when the law is revised.

The Committee again expresses the firm hope that the provisions of the trade union legislation in question will be expressly repealed and requests the Government to keep it informed in this regard.

Romania (ratification: 1957)

The Committee notes the information contained in the Government's reports and in the reports of the Committee on Freedom of Association concerning Cases Nos. 1788, 1891 and 1904 (see 297th and 306th Reports of the Committee on Freedom of Association, approved by the Governing Body at its March 1995 and March 1997 sessions respectively).

The Committee again recalls that its previous comments referred to the need to amend or repeal the following provisions of Act No. 15/1991 concerning the settlement of collective labour disputes and Act No. 54/1991 concerning trade unions, in order to bring the legislation into conformity with the Convention:

- sections 38 and 43 of Act No. 15 establishing a compulsory arbitration procedure which may be set in motion at the sole initiative of the Minister of Labour when a strike has lasted for more than 20 days and its continuation "is likely to affect the interests of the general economy";
- section 30 of Act No. 15 which provides that the Supreme Court of Justice may suspend the start or continuation of a strike for a period of 90 days if it deems that major interests of the economy may be affected;
- section 47 of Act No. 15 which provides for heavy penalties (up to six months' imprisonment) if a strike is called in disregard of section 45(4) and others of the Act;
- section 13 of Act No. 15 which prohibits persons who have declared a strike without respecting the terms laid down by the Act from being elected as trade union delegates;
- sections 32(3) and 36(3) of Act No. 15 which establish the financial liability of strike organizers if the conditions for starting or pursuing the strike have not been met;
- section 13(3) of Act No. 15 under which delegates of the workers can only be elected from among workers with three years' seniority in the unit, or if the unit has been in operation for less than three years, workers who have been in it since its foundation;
- section 9 of Act No. 54 which provides that only Romanian citizens employed in the production unit may be elected to trade union office.

The Government indicates in its report that the Bill amending the Act on the settlement of collective labour disputes has been discussed with the social partners within the Committee for Social Dialogue set up by the Ministry of Labour and Social Protection and is due to be submitted to Parliament for adoption in the near future. It adds that the Bill amending the trade union Act is still under discussion.

The Government describes the changes introduced by the Bill, namely the binding arbitration provided for under sections 38 and 43 of Act No. 15 will be replaced by a conciliation, mediation and arbitration procedure which will be initiated at the request of the parties concerned; employers will be able to apply to the courts for a suspension of the strike of 30 days only (instead of 90 days) if the strike endangers the life or health of persons (section 30), rather than the national economy; and section 13(3), which stipulates the requirement of at least three years' service with an undertaking as a condition of eligibility for trade union office, and sections 32(3) and 36(3), which provide for financial liability for strike organizers who fail to comply with established procedures, have not been included in the Bill. The Government also indicates that only (a) prosecutors, judges, military personnel of the Ministries of Defence, the Interior and Justice and subordinate units, and (b) workers involved in nuclear power operations, continuous furnace facilities where stoppages would give rise to the risk of explosion, and persons acting under orders in the defence of the country, will not be allowed to exercise the right to strike. However, employees in the categories listed under (b) will be able to apply to the Social and Economic Council for mediation if conflicts of interest arise. Lastly, provided that at least one-third of the normal activities of essential services is assured, strikes will be authorized in the following services: telecommunications and broadcasting; rail transport, including railway security staff; and services responsible for public transport and hygiene in public places, and for supplying the population with gas, electricity, heating and water. The list as given in the Bill no longer includes employees in the following services: pharmaceuticals, teaching, repairs of rolling stock, supplying the population with bread, milk and meat.

The Committee notes this information with great interest and again expresses the hope that the text in question will be adopted in the near future and that the Government will take all the necessary measures without delay to bring all its legislation, that is to say, Act No. 15 and Act No. 54 of 1991, into full conformity with the Convention in the very near future.

The Committee requests the Government to provide it with a copy of the legislation amending the Acts in question as soon as it is adopted.

Furthermore, the Committee notes with interest the adoption of the Bill on the conclusion, execution, suspension and termination of an individual labour contract repealing Act No. 1/1970 on labour organization and discipline in state socialist units, which has been the subject of critical comments for many years, and requests the Government to send it a copy of the provision which repeals Act No. 1/1970.

Rwanda (ratification: 1988)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. *Prohibition of the right to strike in the public service.* Recalling that restrictions or prohibition of the right to strike in the public service should be restricted to public servants who are exercising authority in the name of the State, the Committee notes from the information supplied by the Government in its report that the general conditions of service of employees of the State are being amended and that, in order to take into account the observations of the Committee of Experts, the Government intends to amend section 26 of the Legislative Decree of 19 March 1974 issuing the general conditions of service of employees of the State which, in its present wording, forbids state employees to take part in strikes or in activities aimed at causing a strike in the state services. The Committee requests the Government to supply in its next report the draft of the amendment to section 26.
>
> 2. *Hindrance with respect to the election of trade union representatives.* Referring to its previous comments, the Committee notes with interest that the draft Labour Code being submitted, according to the Government's report, amends the provisions of section 8 of the Code prohibiting election of non-Rwandans to trade union office. Section 67(2), of the draft provides that foreign workers may be elected to trade union office after a period of residence of at least five years in the country and subject to their number not exceeding one-third of the members of the organization's management and administration committee.
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> The Committee requests the Government to supply in its next report information on any progress made in these spheres.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

The Committee is also addressing a direct request on other points to the Government.

Saint Lucia (ratification: 1980)

The Committee notes with regret that for the seventh year in succession the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous comment which read as follows:

> With reference to its previous comments on the need to amend sections 18(7) and 19 B(2) of the Trade Unions and Trade Disputes Ordinance of 1959 which confer discretionary power on the Registrar to inspect trade union accounts, by restricting their application to cases of presumed infringements coming to light from the presentation of annual financial reports or to cases of complaints by members of the union, the Committee noted from the Government's report of 1991 that it had planned to review its labour legislation, with the assistance of the ILO, in order to harmonize it with ratified Conventions. It asked the Government to indicate in its next report the measures that it had taken to bring the legislation into conformity with *Article 3 of the Convention* and national practice.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Senegal (ratification: 1960)

The Committee takes note of the information contained in the Government's report.

The Committee recalls that its previous comments concerned the need to amend the national legislation in order to:

- guarantee that trade union organizations are not subject to dissolution by administrative authority (Act No. 65-40 of 22 May 1965) in accordance with *Article 4 of the Convention*;
- introduce greater flexibility into legislation to allow foreign workers to hold trade union office (section 7 of the Labour Code), in accordance with *Article 3* of the Convention;
- restrict the powers of the authorities to impose compulsory arbitration to bring an end to a strike (sections 238-245 of the Labour Code);
- amend provisions which give discretionary powers to the Minister of State for the Interior to issue or refuse to issue a receipt when a trade union deposits its constitution, in accordance with *Article 2* of the Convention (Act No. 76-28 of 6 April 1996 amending section 6 of the Labour Code).

The Committee notes with interest the provisions of the new Labour Code (Act No. 97-17 of 1 December 1997), which contains a number of provisions that will improve application of the Convention. The Committee notes, however, that certain discrepancies remain.

1. *Establishment of trade unions, federations and confederations without previous authorization (Articles 2, 5 and 6* of the Convention). With reference to its previous comments on the need to repeal Act No. 76-28 of 6 April 1976 amending section 6 of the former Labour Code, which gives the Minister for the Interior discretionary power to issue or not to issue a receipt, in accordance with the provisions of section 812 of the Code of Civil and Commercial Obligations, in order to recognize the existence of a trade union when it deposits its constitution, the Committee notes with regret that section 6 of the new Labour Code reproduces in substance the content of the 1976 Act requiring trade unions, federations and confederations to obtain previous authorization from the Minister for the Interior in order to be formed. The Committee again emphasizes the importance which it attaches to compliance with *Articles 2, 5 and 6* of the Convention, which guarantee the right of workers and workers' organizations to establish organizations of their own choosing, *without previous authorization*. The Committee again requests the Government to amend its legislation to repeal the requirement for previous authorization by the Minister for the Interior for the establishment of trade unions, federations and confederations, in order to bring the legislation into conformity with the Convention on these fundamental points.

2. *Election of trade union leaders (Article 3)*. The Committee notes with interest that section 9 of the new Labour Code no longer reserves the right to stand for election to trade union office exclusively for citizens and allows foreign workers who have been resident in Senegal for at least five years to stand for election to trade union office, provided that reciprocal arrangements apply.

3. *Dissolution of trade union organizations by administrative authority (Article 4)*. The Committee also notes with interest the information provided by the Government in its report to the effect that Act No. 65-40 of 27 May 1968 is superseded by new legislation concerning trade union organizations. The Committee notes, however, that section L.287 of the new Labour Code does not expressly repeal this legislation. It considers that it would be desirable to introduce legislation or regulations expressly providing that the measures for administrative dissolution provided by the 1968 Act do not apply to trade unions.

4. *Compulsory arbitration (Articles 3 and 10).* As regards the powers of the authorities to impose compulsory arbitration in the case of a strike, the Committee notes with interest that sections L.271-L.274 of the new Labour Code, concerning collective disputes, do not reproduce the previous provisions and allow a strike to be started following the failure of conciliation attempts, subject to prior notice of 30 days.

The Committee hopes that the Government will take all the necessary measures to bring its national legislation into conformity with the Convention. It requests the Government to keep it informed, in its next report, of any progress made in this area and to provide copies of any repealed or amended provisions.

A request regarding certain points is being addressed directly to the Government.

Seychelles (ratification: 1978)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which dealt with the following:

> The Committee once again requests the Government to provide in its next report comments on the observations made by the Seychelles Workers' Union (SWU) on the application of the Convention.

The Committee is also addressing a direct request to the Government on a number of issues relating to the Industrial Relations Act of 1993.

Slovakia (ratification: 1993)

The Committee takes note of the information provided by the Government in its report. It recalls that its previous comments addressed the following points.

The Committee wished to obtain clarification on certain provisions of Act No. 83 of 1990 on citizens' associations, last amended in 1993, and on Act No. 2 of 5 December 1990 on collective bargaining, last amended in 1996.

1. *Article 2 of the Convention. Right of workers without distinction whatsoever to establish and join organizations.* The Committee takes due note of the Government's report which indicates that the right to organize is guaranteed by paragraph 3 of Act No. 83-1990 respecting citizens' associations to everyone, that is to say, to national workers as well as to workers who are not.

2. *Article 3. Right of workers' organizations to elect their representatives in full freedom.* With regard to the Act respecting citizens' associations, the Committee emphasizes that the General Survey indicates that national legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country (see General Survey on freedom of association and collective bargaining, 1994, paragraph 118). The Committee requests the Government to indicate whether, in addition to its legislation, foreign workers who wish to apply for trade union office may do so at least after a reasonable period of residence in the country.

3. *Article 3. Right of workers' organizations to organize their administration and to formulate their programmes without interference from the public authorities.* The Committee recalls that section 17 of the Act of 1990 respecting collective bargaining, as amended in 1996, requires the vote of half the workers in the enterprise to whom the agreement at enterprise level applies or the vote of half the workers to whom the higher level collective agreement applies to call a strike and emphasizes that the General Survey indicates that, if a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required majority is fixed at a reasonable level

(see General Survey, op. cit., paragraph 170). The Committee requests the Government to provide information on the measures taken or envisaged to reduce the required majority to hold a strike at least with regard to large bargaining units.

The Committee requests the Government to indicate in its next report the progress achieved in this respect.

South Africa (ratification: 1996)

The Committee notes the Government's first report, including the Constitution of the Republic of South Africa, Act 108 of 1996, and the Labour Relations Act, Act No. 66 of 1995 attached thereto.

The Committee notes with satisfaction that further to the recommendations made by the Fact-finding and Conciliation Commission on Freedom of Association (see "Prelude to change: Industrial relations reform in South Africa", *Official Bulletin*, Special Supplement, 1992), the Labour Relations Act, 1995 constitutes a considerable improvement over the previous legislation. In particular, the Committee welcomes that the Labour Relations Act, 1995 has broad coverage, including civil servants and rural workers within its scope, and that it permits union pluralism and the right to strike. It also removes administrative interference in the internal affairs of trade unions, and provides for the simplification of the registration process.

The Committee is also addressing a request directly to the Government.

Spain (ratification: 1977)

The Committee duly notes the approval of Royal Decree 1844/1994 approving the Regulations governing trade union elections to workers' representative bodies in an undertaking, and of Act No. 10/1997 respecting the rights of workers to information and consultation in companies and groups of companies, mentioned by the Government in its report.

The Committee expresses the firm hope that legislation will be adopted in the very near future concerning the minimum level of services to be maintained in the event of a strike, in the definition of which the trade union organizations should be involved, and requests the Government to inform it of any developments in this regard.

Swaziland (ratification: 1978)

The Committee notes the information provided in the Government's report, as well as the statement made by the Government representative to the 1998 Conference Committee and the discussion which took place therein. The Committee also notes the examination by the Committee on Freedom of Association of Case No. 1884 (311th Report, approved by the Governing Body at its 273rd Session (November 1998)).

The Committee would recall that its previous comments concerned numerous discrepancies between the 1996 Industrial Relations Act (IRA) and the provisions of the Convention. The Committee notes from the discussion in the Conference Committee that a national tripartite committee has drafted a new Industrial Relations Bill, with the technical assistance of the International Labour Office, which is aimed at bringing the industrial relations legislation into closer conformity with international labour standards. Upon the adoption of this Bill, the 1996 IRA would be repealed.

The Committee notes that the latest version of the Industrial Relations Bill would appear to resolve all the matters which had been raised in its previous comments. It notes from the Government's report that the Bill has been approved by Cabinet and is on its way to Parliament. The Committee must recall, however, the conclusions of the 1998 Conference Committee on the Application of Conventions and Recommendations in which the Government had been urged to ensure that this Bill be adopted before the possible dissolution of Parliament. The Committee urges the Government to take the necessary measures so that the Bill may be adopted in the very near future and requests it to transmit a copy of the text as soon as it has been passed.

As concerns its outstanding comments in respect of section 12 of the 1973 Decree on the Rights of Organizations and the 1963 Public Order Act, the Committee notes from the report of the Committee on Freedom of Association that the Government considers that these matters will be resolved as soon as the Industrial Relations Bill becomes law. The Committee would recall that the 1973 Decree and the 1963 Act, while concerning more generally mass actions which would result in a disturbance of the peace, had been used in the past to suppress strike action. The Industrial Relations Bill would indeed now appear to grant the exercise of such strike action by way of right. Furthermore, the Committee notes that section 103(1) of the Bill provides that a person holding a public office, or acting or purporting to act on behalf of anyone holding such office, shall not exercise any power conferred by or under any law in such a way as to impede the exercise of rights conferred or recognized by this Act. The Committee expresses the firm hope that, with the passage of this Bill, the 1973 Decree and the 1963 Public Order Act will no longer be able to be used in a manner so as to suppress legitimate trade union activities. In the meantime, the Committee trusts that the Government will take all measures necessary to ensure that neither the 1973 Decree nor the 1963 Public Order Act are used to suppress trade union activities.

[The Government is requested to provide full particulars to the Conference at its 87th Session.]

Switzerland (ratification: 1975)

The Committee notes the information provided by the Government in its report concerning the application of the Convention.

With reference to its previous comments on the need to amend the national legislation (section 23(1) of the Federal Act of 30 June 1927, prohibiting strike action by public servants), in order to ensure that public employees other than those exercising authority in the name of the State, and their organizations, have the right to strike as a means of defending their economic, social and occupational interests, the Committee notes that the Government again indicates in its report that the statement concerning the total revision of the Act of 1927 has not yet been adopted. It nevertheless adds that the draft text in respect of the employees of the Confederation was submitted for consultation on 6 May 1998, and that the consultation procedure should be concluded by 31 August 1998. This statement should be submitted to the Federal Council at the beginning of 1999. The draft text is expected to come into force on 1 January 2001.

The Committee notes with interest that section 34 of the draft text repeals the Act of 30 June 1927 respecting the conditions of service for public servants and that section 21 of the draft text provides that the Federal Council can only restrict or withdraw the right to strike if the security of the State, the safeguard of its interests governed by external relations or the guarantee of vital supplies or goods for the country so require.

The Committee is bound once again to express the firm hope that the revision of the Federal Act on the conditions of public service, taking into account the principles of freedom of association, and, in particular, no longer denying public servants other than those who exercise authority in the name of the State, the right to strike in order to defend their occupational interests, will be adopted in the very near future. The Committee again expresses the firm hope that in its next report the Government will be able to provide information on the measures taken in order to bring its legislation into conformity with the principles of freedom of association without undue delay.

Syrian Arab Republic (ratification: 1960)

The Committee notes the information provided by the Government in its previous reports. The Committee recalls that its previous comments concerned the discrepancies between the national legislation and the Convention, namely Legislative Decree No. 84 of 1968 respecting workers' organizations and the amendments to the Decree up to and including 1982, the Agricultural Labour Code No. 136 of 1958, Act No. 21 of 1974 respecting peasants' associations and Legislative Decree No. 250 of 1969 respecting craftsmen's associations. The Committee recalls the need to amend the following provisions:

— section 160 of the Agricultural Labour Code No. 136 of 1958, which prohibits strikes in the agricultural sector, and section 262 of the same Code, which provides that any person who instigates or participates in a strike or lockout is liable to a term of imprisonment ranging from three months to one year;

— section 32 of Legislative Decree No. 84 and section 6 of Legislative Decree No. 250, which prohibit unions from accepting gifts, donations and legacies without prior ministerial approval or that of the General Federation of Workers' Union;

— section 35 of Legislative Decree No. 84, which confers on the Ministry wide powers of intervention over trade union finances;

— section 36 of Legislative Decree No. 84 and section 12 of Legislative Decree No. 250, which require that first-level trade unions allocate a certain percentage of their resources to higher-level trade unions;

— section 44(b)/4 of Legislative Decree No. 84, which provides for the requirement of trade union membership for a period of at least six months prior to election to trade union office;

— section 49(c), which confers on the General Federation the right to dissolve the Executive Committee of any trade union;

— section 25 of Legislative Decree No. 84, as amended in 1982, which subjects non-Arab workers to a condition of reciprocity, thereby restricting their trade union rights;

— sections 3, 4, 5 and 7 of Legislative Decree No. 84 of 1968, which organizes the structures of trade unions on a single union basis;

— sections 4, 6, 8, 13, 14 and 15 of Legislative Decree No. 30 of 1982 amending Legislative Decree No. 84 of 1968, which designates the General Federation of Workers' Union as the single central trade union organization;

— section 2 of Legislative Decree No. 250 of 1969 regarding craftsmen's associations and sections 26 to 31 of Act No. 21 of 1974 regarding peasants' cooperative associations, which impose a single trade union system.

The Committee moreover recalls that it had previously requested the Government to amend or repeal sections 330, 332, 333 and 334 of Legislative Decree No. 148 of 1949 respecting the Penal Code, which restricts the right to strike and lockouts by imposing heavy sanctions, including terms of imprisonment. Section 330 of the Penal Code provides for loss of civic rights for public servants who, as an organized group, hinder the functioning of a public service. Section 332 of the Penal Code imposes a term of imprisonment or a fine for any organized strike action by more than 20 workers in the transport, postal, telegraphic and telecommunications, water and electricity-generating services and for strikes accompanied by demonstrations on roads or at public places or where strikers occupy offices and buildings (even peacefully). Section 333 imposes a term of imprisonment of a maximum of one year, or a fine of not more than 50 Syrian pounds for any person who has encouraged a strike or lockout. A term of imprisonment ranging from two months to one year is enforceable under section 334 on any person who refuses to execute or who defers the carrying out of an arbitration sentence or any other decision handed down by an industrial tribunal.

Moreover, the Committee recalls that it has been requesting the Government for several years to amend section 19 of Legislative Decree No. 37 of 1966 respecting the Economic Penal Code which imposes forced labour on any person who causes prejudice to the general production plan decreed by the authorities by acting in a manner contrary to the plan. The Committee had pointed out that a general prohibition of strike action provided for by legislation, directly or indirectly, could considerably restrict the right to strike by trade union organizations, which is contrary to *Articles 3 and 8 of the Convention*. The Committee emphasizes that strike action is an intrinsic corollary of the right to organize and considers that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State, or to employees in essential services in the strict sense of the term, namely, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see the General Survey on freedom of association and collective bargaining, 1994, paragraph 159). The Committee trusts that the Government will review its penal legislation in the light of these considerations and will provide in its next report, any information on the measures taken or envisaged to bring its legislation into conformity with the principles of freedom of association.

The Committee notes with great interest the information provided by the Government in its previous reports to the effect that the Cabinet has recommended the approval and promulgation of the Bill to repeal section 160 of the Agricultural Labour Code No. 134 of 1958, which prohibits strikes by farmers and agricultural workers, and the repeal of section 262 of this Code, which enforces a term of imprisonment on any person who encourages or participates in a strike. The Cabinet has also recommended the amendments of section 59(e) of Act No. 21 of 1974 respecting peasants' associations and sections 6 and 12 of Legislative Decree No. 250 of 1969 respecting craftsmen's associations.

The Committee also notes with interest that the Government reiterates its previous information and again indicates that the competent authorities are examining a new Bill amending sections 32, 35, 36(2), (3) and (4), 44(b)/4 and 49(c) of Legislative Decree No. 84 of 1968, which restricts the freedom of trade unions to organize their administration and their activities and confers, in particular, wide powers of intervention on the authorities in respect of trade union finances, to bring these sections into conformity with the Convention.

The new Bill also amends certain sections of Legislative Decree No. 84 of 1968, as amended by Legislative Decree No. 30 of 1982, which continued to be incompatible with the Convention:

— section 22(a), which is still in force, requires that trade union constitutions must correspond with the model established by the General Federation of Workers' Union. The legal obligation for first-level unions to conform to a model constitution and use such a model as a basis is contrary to *Article 3* of the Convention, which guarantees the right of workers' organizations to draw up their constitutions and rules without interference by the public authorities (see General Survey, op. cit., paragraph 111). The Committee takes due note of the proposed amendment which will bring this section into conformity with the provision of the Convention;

— section 25 confers on foreign workers the right to join trade unions only on condition of reciprocity. This provision is incompatible with *Article 2* of the Convention, which applies to *all workers, without distinction whatsoever*. The Committee takes due note of the proposed amendment to abolish the requirement for reciprocity;

— section 36(5), currently in force, provides that trade unions must allocate 20 per cent of their actual resources to the General Federation of Workers' Union. This provision is not in conformity with *Article 3* of the Convention, which guarantees workers' organizations the right to organize their administration without the interference of the public authorities and, in particular, the right to autonomy and financial independence as well as the protection of its assets.

The Committee notes that the Bill in respect of section 22(b) provides that trade unions will make a "voluntary contribution" to the social security fund as well as to the Federation of Workers' Union. The Committee recalls that the financial participation by first-level trade unions to higher-level organizations imposed by law could constitute an act of interference, which is contrary to *Article 3, paragraph 2*, of the Convention (see General Survey, op. cit., paragraph 111). Such provisions should be left to the rules of the trade unions and not set out in legislation.

The Committee recalls, moreover, that, despite the amendment of Legislative Decree No. 30 of 1982, discrepancies exist between the Convention and section 18(a) of Legislative Decree No. 84. The provision provides that trade unions have the right to invest in financial or other projects, but only in the conditions and according to the methods determined by the Minister. The Convention establishes, in *paragraphs 1 and 2 of Article 3*, the right of workers' organizations to organize their administration and their activities without the interference of the public authorities.

The Committee notes further the information provided by the Government in its report to the effect that the General Federation of Workers' Union, as well as the General Federation of Peasants and the General Federation of Craftsmen adhere to the principle of trade union unity, in conformity with the decisions of their assemblies, in order to maintain the organizational force of each of the above federations, and have requested the Government to refrain from amending the legislation. The Committee, at the same time, is bound to emphasize that there is a fundamental difference between, on the one hand, a trade union monopoly established or maintained by law and, on the other hand, voluntary groupings of workers or unions which occur, without pressure from the public authorities, or due to the law, because they wish, for instance, to strengthen their bargaining position. It is generally to the advantage of workers and employers to avoid proliferation of competing organizations, but trade union unity directly or indirectly imposed by law runs counter to the standard expressly laid down in the Convention (see General Survey, op. cit., paragraph 91). In this respect, the Committee, in paragraphs 97 and 98 of the General Survey, recognizes that certain legislation, in an attempt to establish a proper balance between imposed trade union unity and the fragmentation of organizations, establishes the concept of the most representative trade union. The Committee considers that this type of provision is not in itself contrary to the principle of freedom of association, provided that certain conditions are met. Firstly, the determination of the most representative organization must be based on objective, pre-established and precise criteria so as to avoid any possibility of bias or abuse. Furthermore, the distinction should generally be limited to the recognition of certain preferential rights, for example, for such purposes as collective bargaining. However, the freedom of workers to choose would be jeopardized if the distinction between the most representative and minority trade unions results, in law or in practice, in the prohibition of other trade unions that workers would like to join. This distinction should not therefore result in depriving those trade unions who are not recognized as being amongst the most representative of the essential means of defending the occupational interests of their members, and organizing their administration and activities, as provided for under the Convention.

The Committee therefore requests the Government to amend the following Legislative Decrees, as soon as possible, to institute a system of trade union unity and bring its legislation into conformity with the Convention:

— sections 3, 4, 5 and 7 of Legislative Decree No. 84 which organizes the structure of trade unions on a single-union basis;

— sections 4, 6, 8, 13, 14 and 15 of Legislative Decree No. 30 of 1982, which designates the General Federation of Workers' Union as the single central trade union organization;

— section 2 of Legislative Decree No. 250 of 1969, which concerns craftsmen's associations, and sections 26 to 31 of Act No. 21 of 1974, concerning peasants' cooperative associations, which imposes a single trade union system.

The Committee hopes that the proposed amendments will be rapidly adopted and promulgated and requests the Government to take the necessary measures to bring all of its national legislation into conformity with the Convention in the near future. The Committee, in this respect, recalls that the technical assistance of the Office is available to the Government, and requests the Government to inform it in its next report of any progress achieved in this area and to provide copies of any provisions which have been repealed or amended.

Tajikistan (ratification: 1993)

The Committee notes with satisfaction that the Law on Trade Unions of 12 March 1992 allows for the possibility of trade union pluralism and guarantees the right to strike. It also notes that this Law refers to other legal texts which have not been provided by the Government. It therefore raises a number of points in a request directly addressed to the Government.

The former Yugoslav Republic of Macedonia (ratification: 1991)

The Committee notes with satisfaction the provisions of the Constitution of 1991 which guarantee citizens freedom of association (article 20), the right of citizens to establish trade unions and the right of those trade unions to constitute confederations and become members of international trade union organizations (article 37), and the right to strike (article 38). Foreign nationals enjoy the freedoms and rights guaranteed by the Constitution subject to the conditions established by law and international agreements (article 29).

The law may restrict freedom of association and the right to strike for certain groups namely, the armed forces, police and administrative bodies (articles 37 and 38). The rights and freedoms guaranteed by the Constitution can be restricted during states of emergency or war (article 54).

The Committee requests the Government to provide detailed replies to the questions contained in the report form sent to it concerning the application of this fundamental Convention. The Committee also requests the Government to provide with its report the texts currently in force of the Labour Code and Penal Code, and the text governing freedom of association, the right to organize, the settlement of collective disputes and the right to strike.

The Committee is also addressing a request directly to the Government on one point.

[The Government is asked to report in detail in 1999.]

Togo (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. *Article 2 of the Convention. Right of workers without distinction whatsoever to establish and join trade union organizations, including in export processing zones.* The Committee notes the Government's statement that the provisions of the Labour Code of 1974 apply to labour relations between employers and workers in the export processing zones established under Act No. 89-14 of September 1989. It requests the Government to provide a copy of any collective agreements covering workers in the above zones.
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> 2. *Article 3. Right of workers' organizations to elect their representatives in full freedom.* The Committee recalls that foreign workers must be allowed to hold trade union office at least after a reasonable period of residence in the host country, and requests the Government to take the necessary measures without delay to amend section 6 of the Labour Code of 1974, which prohibits foreigners from carrying out administrative or management functions in trade unions. It requests the Government to keep it informed of any developments in this respect and to provide it with a copy of the text of the amended Labour Code.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Trinidad and Tobago (ratification: 1963)

The Committee notes from the Government's report that the Committee appointed to review the Industrial Relations Act has resumed its activities, and hopes that its comments will be fully taken into account in the review.

The Committee points out the following:

— the need to amend sections 59(4)(a), 61, 65 and 67 of the Industrial Relations Act, 1972, as amended, which can be applied to prohibit a strike which is not declared by a majority union, or at the request of one party, or in essential services defined too broadly, or when the Minister considers that the national interest is threatened, under penalty of imprisonment, so as to enable a simple majority of the voters in a bargaining unit (excluding those workers not taking part in the vote) to call a strike; and

— to ensure that any resort to the courts by the Ministry of Labour or by one party only to end a strike is limited to cases of strikes in essential services in the strict sense of the term, that is to say those in which the strike would endanger the life, personal safety or health of the whole or part of the population, or in cases of acute national crisis or in relation to public servants exercising authority in the name of the State.

The Committee had noted the Government's statement in 1993 that a tripartite committee was to review the whole of the Industrial Relations Act, in consultation with the social partners. The Committee once again urges the Government to take the necessary measures to bring the legislation into conformity with the Convention and requests the Government to indicate the progress made in this respect in its next report.

Tunisia (ratification: 1957)

The Committee notes the information contained in the Government's report.

Referring to its earlier comments concerning the obligation to obtain the approval of the Central Workers' Union before declaring a strike, the Committee notes that the Government reiterates its previous statements to the effect that the trade union organizations have insisted on maintaining the current provisions of section 376bis (2) of the Labour Code, considering that the approval needed from the Central Workers' Union for a strike was a useful procedure for informing the Central Union and for the effectiveness of conciliation activities and measures aimed at resolving the conflict. The Committee also notes the information from the Government that no complaint has been submitted to the authorities by the first-level unions on the grounds that obtaining prior approval for the strike from the Central Workers' Union restricts their right to organize their own activities. In this regard, the Committee can only reiterate its earlier comments and emphasize once again that the provision in question might tend to restrict the right of first-level trade union organizations to organize their activities *(Article 3 of the Convention)* and to further and defend the interests of workers *(Article 10)*, and therefore request the Government to repeal this provision in order to bring its legislation into fuller conformity with the principles of freedom of association.

With regard to the essential services listed under section 381*ter* of the Labour Code, the Committee notes the Government's statement to the effect that it will provide the Office with a copy of the Decree listing these essential services as soon as it is adopted.

Finally, the Committee is addressing a request directly to the Government.

Turkey (ratification: 1993)

The Committee takes note of the information provided in the Government's report, as well as the comments made by the Confederation of Turkish Trade Unions (TÜRK-IŞ), by the Energy, Road, Construction, Infrastructure, Title Deed Land Survey Public Sector Employees' Trade Union and by the Confederation of Turkish Employers' Associations (TISK). The Committee also notes the statement of the Government representative to the 1997 Conference Committee on the Application of Standards and the discussion which took place therein.

The Committee notes with interest the amendments made to the Trade Unions Act No. 2821 by Act No. 4277 of 26 June 1997. In particular, the Committee notes that this Act repeals certain provisions of sections 37, 39, 40 and 59 which had been the subject of its previous comments in respect of the prohibition of certain political activities of unionists, broad powers for state auditing of trade union accounts and the control over the use and receipt of funds. It notes, however, that section 37, as amended, continues to provide that union officers may not also be candidates for local administrative and general parliamentary elections, under penalty of imprisonment of up to two years (section 59(6)). The Committee must recall that it is the prerogative of workers' and employers' organizations to determine the conditions for electing their leaders, and the authorities should refrain from any undue interference in the exercise of the right of workers' and employers' organizations to elect their officers in full freedom, as established under *Article 3 of the Convention*. It therefore requests the Government to indicate the measures envisaged to repeal this restriction and to ensure that the conditions of eligibility for trade union office shall be determined by the organizations themselves.

As concerns the right to organize for public servants, the Committee notes from the Government's report that a new section was inserted into the Public Servants Act No. 657 concerning the right of public servants to form and join unions and upper-level organizations in accordance with the principles set forth in the Constitution and pertinent legislation. The Government adds that a draft Bill concerning public servants' unions was submitted to the National Assembly, general discussion has been completed and half of the proposed articles have been approved. Due to demands of the opposition parties, however, the legislative process is pending the re-evaluation and revision of some of the remaining articles. The Committee also notes in this respect the comments of TÜRK-IŞ and the Energy, Road, Construction, Infrastructure, Title Deed Land Survey Public Sector Employees' Trade Union to the effect that this Bill is in direct contravention with certain principles of freedom of association. Recalling the need to adopt legislation to ensure the full rights of the

Convention to public servants, the Committee requests the Government to transmit a copy of the latest version of the above-mentioned Bill with its next report so that it may examine its compatibility with the Convention.

The Committee must also recall its previous comments in which it raised discrepancies between the legislation and the Convention on the following points:

- restrictions on industrial action in Act No. 2822 on collective labour agreements, strikes and lockouts of 5 May 1983 (prohibition of protest and sympathy strikes (section 54), severe limitations on picketing (section 48) and a too long waiting period for calling strikes (sections 27 and 35), restriction on the right to strike for public employees in state enterprises (Civil Servants Act of 1965) and severe sanctions, including imprisonment, for participation in "unlawful" strikes not determined in accordance with freedom of association principles);
- the imposition of compulsory arbitration at the request of any party (section 32 of Act No. 2822) in respect of many services which cannot be considered to be essential services in the strict sense of the term (sections 29 and 30).

The Committee expresses the firm hope that the Government will take the necessary measures in the very near future to amend this legislation in order to bring it into full conformity with the Convention and would recall that ILO technical assistance is available in this regard if the Government so desires.

Finally, the Committee is raising a number of other points in a request addressed directly to the Government.

Ukraine (ratification: 1956)

The Committee takes note of the report supplied by the Government. It also notes the observations made by the Independent Union of Miners at the Barakov Mine Enterprise in relation to alleged violations of the Convention in the mine, and the information supplied by the Government in reply. In this regard, see the Committee's comments under Convention No. 98.

The Committee notes the Government's statement that, aware of the importance of complying with international commitments, the Cabinet is taking specific measures to reform industrial relations and improve the framework of laws and standards. In particular, the Government indicates that the Act on the settlement of collective labour disputes was passed in March 1998. Furthermore, the Government states that the Cabinet, in consultation with employers' organizations and trade unions, has drafted and submitted to the Supreme Council draft Acts on trade unions, on social partnership and on amendments and additions to the Act on collective agreements and accords. Finally, a draft Presidential Decree on a national mediation and conciliation service has also been drawn up.

In this connection, the Committee would recall its previous comments in which it emphasized the importance of ensuring that all workers and employers, without distinction whatsoever, including nationals and foreigners working in the territory of the Ukraine, have the right to form and join organizations for the defence of their interests *(Article 2 of the Convention)* and that such organizations are able to organize their activities and formulate their programmes without interference by the government authorities.

The Committee trusts that the texts referred to by the Government will ensure this principle and requests the Government to transmit copies of the above-mentioned draft texts so that it may ascertain their conformity with the Convention.

Finally, the Committee requests the Government to indicate in its next report whether the former provisions of the Penal Code which were previously applicable in the USSR, and particularly section 190(3) which contained significant restrictions on the exercise of the right to strike in the public and transport sectors enforceable by severe sanctions, including up to three years' imprisonment, have been repealed by a specific text.

The Committee notes with interest the adoption of the Act on the procedure for the settlement of collective labour disputes and is addressing a request directly to the Government in respect of certain matters relative to this law.

United Kingdom (ratification: 1949)

The Committee takes note of the information provided in the Government's report. It further notes the Government's statement to the 1997 Conference Committee on the Application of Standards and the discussion which took place therein.

1. *Dismissal of workers at GCHQ.* With reference to its previous comments relating to the need to restore trade union rights for workers at Government Communications Headquarters in Cheltenham (GCHQ), the Committee notes with satisfaction from the Government's report that one of the first acts of the new Government on taking office in May 1997 was to restore to the employees of GCHQ the right to belong to any trade union of their choice. It further notes that the Director of GCHQ, the Chairman of the GCSF and the general secretaries of the civil service unions signed a legally binding agreement under which the Government Communications Group of the PCS is recognized for consultation and negotiation on matters exclusive to GCHQ. The other civil service unions are recognized for service-wide matters, and for representation of individual members. Under the collective agreement, the unions have agreed not to take any industrial action that would disrupt GCHQ operations. The unions also have unilateral right of access to binding arbitration if a dispute is unresolved. Finally, the Government indicates that the Foreign Secretary has revoked the certificate which contained the remaining restrictions on access to industrial tribunals and the first of those former employees who were dismissed for continuing union membership returned to work at GCHQ on 9 September 1997.

2. *Matters relating to the 1992 Trade Union and Labour Relations (Consolidation) Act and other related texts.* The Committee notes with interest from the Government's report that consultations have been held with the social partners in order to determine the changes necessary to the employment law resulting in the publication of a White Paper on Fairness at Work. It further notes the Government's statement that the relevant legislative proposals will be made as soon as possible.

The Committee further notes with interest the Government's indication that it recognizes that the existing law and Code of Practice on industrial action ballots and notices are too complicated and rigid and that failure to comply with these complex requirements can result in injunctions preventing unions from carrying out planned industrial action. It welcomes the Government's indication that it has announced plans to simplify the law and the Code of Practice and has invited views from interested parties, including unions and employers' organizations on how this should be done. According to the Government, the proposals should lead to clearer and better regulation in this area and help ensure that unions avoid legal action over technical breaches of law. Furthermore, with reference to its previous comments concerning section 226A of the 1992 Act in respect of strike ballots, the Committee notes with interest the Government's statement of its intention to amend the law on industrial action ballots and notice to make clear that, while the union's notice to the employer should still identify as accurately as reasonably practicable the group or category of employees concerned, it need not give names. It requests the Government to keep it informed of the progress made in this regard.

(a) *Unjustifiable discipline (sections 64-67).* The Committee recalls that the previous comments on this matter concerned the above-mentioned provisions of the 1992

Act which prevented trade unions from disciplining their members who refused to participate in lawful strikes and other industrial action or who sought to persuade fellow members to refuse to participate in such action.

In its latest report, the Government states that it strongly supports the principle that workers should be free to join the trade union of their choice as trade unions provide important services to their members. According to the Government, it therefore follows that the rights of unions to discipline and expel members need to be balanced against the rights of individuals to acquire and retain their membership. The Government adds that, under the law of the United Kingdom, individuals are almost invariably breaking their contracts under which they work when they take any form of industrial action, irrespective of whether the action is official or unofficial, or whether the action is lawfully or unlawfully organized. These workers can therefore be sued on an individual basis by employers for damages. In contrast, unions cannot be sued for damages if they organize industrial action within the law. In these circumstances, the Government considers that individuals should be free to decide whether or not to take part in lawfully organized industrial action since the potential liability is the individual's and not the union's.

The Committee must, nevertheless, once again recall that *Article 3 of the Convention* concerns the rights of trade unions to, inter alia, draw up their constitutions and rules and to organize their activities and to formulate their programmes, without interference by the public authorities. The free choice to join a trade union can clearly be based on a careful consideration of the provisions in such constitutions and rules. Furthermore, the Committee would recall that the prohibition of such disciplinary measures carries with it heavy financial penalties. The Committee considers unions should have the right to determine whether or not it should be possible to discipline members who refuse to comply with democratic decisions to take lawful industrial action, and that the financial penalties imposed by the legislation in this respect constitute undue interference in the right of workers' organizations to draw up their constitutions and rules freely and would therefore once again ask the Government to refrain from any such interference. As concerns the Government's argument in respect of the liability of individual workers, the Committee recalls the importance it attaches to the maintenance of the employment relationship as a normal consequence of the recognition of the right to strike.

(b) *Immunities in respect of civil liability for strikes and other industrial action (section 224).* The Committee recalls that its previous comments concerned the absence of immunities in respect of civil liability when undertaking sympathy strikes. It pointed out in this respect that workers should be able to take industrial action in relation to matters which affect them even though, in certain cases, the direct employer may not be party to the dispute.

The Committee notes that the Government reiterates its previous comments concerning secondary action and adds that permitting forms of secondary action would be a retrograde step and would risk taking the United Kingdom back to the adversarial days of the 1960s and 1970s when industrial action frequently involved employers and workers who had no direct connection with a dispute.

The Committee further notes the comments made by the Trades Union Congress (TUC) of 7 November 1996 that it is a common tactic of employers to avoid the adverse effects of disputes by transferring work to associated employers and that companies have restructured their businesses in order to make primary action secondary. The Government, while indicating that there is no official information collected to measure the extent of this phenomenon, considers that it is fully consistent with its legislation and the Convention for employers to mitigate the adverse financial consequences of a strike.

The Committee must note that, beyond the effects that these provisions may have in respect of secondary action, it would appear that the absence of protection against civil liability may even have a negative effect on primary industrial action. In these circumstances, the Committee can only reiterate its position that workers should be able to participate in sympathy strikes provided the initial strike they are supporting is itself lawful and requests the Government to indicate any developments in this regard.

3. *Dismissals in connection with industrial action.* In its previous comment, the Committee had drawn the Government's attention to paragraph 139 of its 1994 General Survey in which it noted that sanctions or redress measures were frequently inadequate when strikers were singled out through some measures taken by the employer (disciplinary action, transfer, demotion, dismissal) and that this raised a particularly serious issue in the case of dismissal if workers could only obtain damages and not their reinstatement. The Committee indicated that legislation should provide for genuine protection in this respect, otherwise the right to strike would be devoid of content.

The Committee notes with interest the Government's indication that it intends to allow in certain circumstances those dismissed for taking part in lawfully organized official industrial action to complain to a tribunal of unfair dismissal, even where all workers have been dismissed. The Committee intends to examine the progress made in respect of the Government's proposals in this regard under Convention No. 98.

The Committee is addressing a request directly to the Government concerning certain other matters.

Venezuela (ratification: 1982)

The Committee notes the information provided by the Government in its report and recalls that its previous comments concerning the Organic Labour Act referred to the following:

- the requirement for an excessively long period of residence (more than ten years) in order for foreign workers to hold trade union office (section 404);
- the excessively long and detailed list of duties entrusted to and aims to be achieved by workers' and employers' organizations (sections 408 and 409);
- the requirement for an excessively high number of workers (100) necessary to form self-employed workers' trade unions (section 418); and
- the requirement for an excessively high number of employers (ten) needed to establish an employers' trade union (section 419).

The Committee notes the observations made by the Government in which it expresses its disagreement with the comments which the Committee has made for a number of years with regard to the provisions of the Organic Labour Act. The Committee wishes to recall that, by ratifying Convention No. 87, the Government, under the terms of *Articles 2 and 3 of the Convention*, undertook to respect the rights of workers and employers to establish and join organizations and the right of those organizations to elect their own representatives in full freedom, without any interference from the public authorities which would restrict these rights, and subject only to the rules of the organization concerned. The Committee emphasizes that any regulations relating to the minimum number of members of trade unions or employers' associations, to the election of officers, or to the aims and objectives of such organizations, are a matter solely for the organizations themselves in their own constitutions and rules, and not for legislation.

The Committee also notes, however, the tripartite accord signed on 12 May 1998 to establish within two months an ad hoc Tripartite Committee responsible for drawing up the necessary instruments to bring national legislation and practice into conformity with the requirements of the international labour Conventions ratified by the country.

The Committee hopes that the Government will adopt the necessary measures in the near future to eliminate existing discrepancies between national legislation and the Convention.

The Committee requests the Government to inform it in its next report of any progress made in this respect.

Finally, the Committee is addressing a request directly to the Government.

Yemen (ratification: 1976)

The Committee notes the new Labour Code (Act No. 5 of 1995).

Referring to its previous observations, the Committee notes with satisfaction that a certain number of legislative provisions or regulations which had been the subject of its comments are no longer included in the 1995 Labour Code, thereby improving the application of *Articles 2, 3 and 4 of the Convention.*

In its previous observations, the Committee had requested the Government to amend or repeal the following provisions:

- the prior authorization for the establishment of a trade union or a federation (sections 154 and 158 of the Labour Code of 1970, section 57 of the Regulations concerning the model statutes of the General Trade Union of Manual and Non-Manual Employees);
- the high number of workers required to form trade unions (50 for a trade union or trade union committee and 100 for a general trade union) (sections 21, 137, 138 and 139 of the Labour Code and section 51 of its Regulations).

The Committee had considered these provisions to be contrary to *Article 2* of the Convention. It notes with interest that the provisions of the former Labour Code concerning prior authorization for the establishment of a trade union or a federation and the provisions which required an excessively high number of workers to form a trade union have not been included in the new Labour Code of 1995.

The Committee had also requested the Government, in its previous observations, to amend or repeal the following provisions:

- the powers of the public authorities to interfere in the financial management of trade unions (sections 13(2) and (4), and 133(13) and (14) of the Labour Code of 1970), trade union activities (sections 145(2) and 34 of its Regulations) and the drawing up of statutes (sections 150 of the Code and 162 of its Regulations);
- the prohibition on political activities by trade unions (section 132 of the Code);
- the denial of the right of foreign workers to hold trade union office (section 142(3) of the Code).

The Committee considered such provisions were contrary to *Article 3* of the Convention. It notes with interest that the provisions in question have not been included in the new Labour Code.

The Committee also requested the repeal or amendment of the provision which allowed the administrative dissolution of a trade union (section 157 of the Labour Code of 1970), which is contrary to *Article 4* of the Convention. It notes with interest that the provision in question has not been included in the new Code. Moreover, the Committee notes that section 162 of the Code repeals the provisions of the Labour Code of 1970, as well as any text or provision which is contrary to the provisions of the Code.

The Committee requests the Government to supply copies of the regulations of the Labour Code currently in force to enable it to examine their conformity with the Convention.

In addition, the Committee had also requested the Government to amend or repeal the provisions on trade union monopoly (sections 129, 138, 139 of the Labour Code and sections 5(h), 41, 42, 43 and 47(a) of its Regulations). The Committee notes, in this respect, that the majority of provisions on which it had previously commented have not been included in the new Labour Code, but that the Labour Code of 1995 continues to refer by name to the General Federation of Trade Unions in certain provisions and, in particular, in sections 2, 131(c) and 145(2). The Committee considers that such provisions could result indirectly in making it impossible to establish a second federation to represent workers' interests.

In this respect, the Committee wishes to recall that if the Convention pronounces neither in favour of a system of trade union diversity nor of a single trade union system, it implies that pluralism should remain possible in all cases and that workers should remain free to choose to set up unions outside the established structures, should they so wish. (See General Survey on freedom of association and collective bargaining, 1994, paragraphs 92 and 96.) Therefore, the Committee requests the Government to withdraw the reference by name to the General Federation of Trade Unions and, if it so wishes, to replace it by the concept of the most representative federations.

The Committee also requested the Government to amend or repeal restrictions on industrial action by trade unions (section 16 of Ministerial Order No. 42 of 1975 concerning procedures for the settlement of labour disputes).

It recalled that these provisions are contrary to the right of workers and their organizations to organize their activities and to formulate their programme of action for furthering and defending their economic, social and professional interests, including the right to strike, without interference from the public authorities, in accordance with the principles set forth in *Articles 3 and 10* of the Convention.

The Committee notes with interest that the current Labour Code recognizes the right to strike and provides for a system for the settlement of disputes (sections 128 -143) which must be complied with for these rights to come into force. Legitimate strike action is governed by sections 144-150 of the Code.

However, the Committee notes that the Code sets outs conditions which are too strict for a strike to be legitimate, namely that it can only be called following the completion of the procedures for the settlement of disputes, and under sections 130, 137 and 139 of the Code the dispute can be referred to compulsory arbitration at the request of only one of the parties (employer or worker) and the exercise of the right to strike can be suspended for 85 days. It must be approved by 25 per cent of workers in a general assembly attended by a minimum of 60 per cent of the total number of workers in the service of the employer concerned. The strike call must have been submitted to the general trade union concerned, it must have been signed by two-thirds of its members and the trade union committee must have obtained written approval from the General Federation of Trade Unions. The strike must concern more than two-thirds of the workforce of the employer concerned and three weeks' notice of intention to strike must have been given (section 145). When the strike takes place, it must comply with the procedure laid down in the Labour Code (section 146). Legitimate strikes may not incur sanctions against workers or dismissals (section 148(2)). The Committee considers that the fact that strike action must be approved by the General Federation of Trade Unions, by its very nature restricts the right of trade union organizations to organize their activities and to further and defend workers' interests.

The Committee requests the Government to amend the provisions concerning arbitration which considerably restrict the exercise of the right to strike and to repeal the provisions concerning the prior approval by the General Federation of Trade Unions in order to call a strike in order to bring its legislation into fuller conformity with the principles of freedom of association.

The Committee also requests the Government to indicate whether section 162 of the Code repeals section 16 of Ministerial Order No. 42 of 1975.

Finally, the Committee notes that foreign and casual workers, domestic workers and similar categories and certain agricultural workers are only subject to the application of the Code under certain conditions (section 3). The Committee requests the Government to indicate whether and in accordance with which provision it recognizes these workers' right to organize for the defence of their interests.

The Committee had, moreover, been informed of the drawing up of a draft Bill on trade unions. It requests the Government to supply the text as soon as it is adopted, as well as the text of any regulations to the new Labour Code and any other applicable texts, in particular, the Act respecting associations and cooperatives and the Trade Union Act mentioned in the 1991 Act respecting the public service.

Zambia (ratification: 1996)

The Committee notes the Government's first report, including the Industrial and Labour Relations (Amendment) Act, 1997 attached thereto. The Committee also takes note of the comments of the Zambia Congress of Trade Unions and the Government's reply to these comments. The Committee notes with satisfaction that the Industrial and Labour Relations (Amendment) Act, 1997, amends the Industrial and Labour Relations Act, 1993, which had recognized the Zambia Congress of Labour and the Zambia Federation of Employers as the only central bodies to which trade unions and employers' organizations could affiliate. Pursuant to the recent amendments, trade unions and employers' organizations are now free to establish and join federations of their own choosing, allowing for pluralism at the federation level.

The Committee also notes that the Industrial and Labour Relations Act, as amended, excludes certain groups of workers from its scope, and also contains other provisions that are not fully compatible with the rights enshrined in the Convention. The Committee, therefore, raises particular points in a request addressed directly to the Government.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Argentina, Australia, Bangladesh, Belarus, Benin, Burundi, Canada, Chad, Costa Rica, Czech Republic, Denmark, Dominica, Dominican Republic, Egypt, Estonia, Finland, Gabon, Ghana, Kyrgyzstan, Latvia, Lesotho, Lithuania, Luxembourg, Madagascar, Mexico, Mongolia, Mozambique, Panama, Paraguay, Peru, Philippines, Portugal, Russian Federation, Rwanda, Sao Tome and Principe, Senegal, Seychelles, South Africa, Sri Lanka, Syrian Arab Republic, Tajikistan, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Ukraine, United Kingdom, Uruguay, Venezuela, Zambia.*

Information supplied by *Azerbaijan* and *Slovenia* in answer to a direct request has been noted by the Committee.

Convention No. 88: Employment Service, 1948

Algeria (ratification: 1962)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

> The Committee notes the Government's detailed report containing information on the reorganization of the National Manpower Office (ONAMO). It notes in particular that the ONAMO has been replaced by the National Employment Agency (ANEM) established by Executive Decree No. 90.259 of 8 September 1990. It also notes the statistical information on the number of applications for employment, vacancies notified and persons placed in employment for the period 1990-92 supplied by the Government with the report.
>
> *Articles 4 and 5 of the Convention.* The Committee notes that the ANEM is administered by an administrative board which, under section 14 of the pertinent decree, includes six representatives of occupational organizations of public and private employers, three elected representatives of ANEM workers and one representative of each national association of employment seekers up to a maximum of five. With reference to its previous observations, the Committee wishes to recall that "the representatives of employers and workers" on the advisory committees stipulated in the Articles of the Convention "shall be appointed in equal numbers after consultation with representative organizations of employers and workers". It reiterates its hope that the Government will adopt in the near future the necessary measures to bring the national regulations into conformity with those Articles of the Convention which are designed to ensure that there is cooperation between representatives of employers and workers in the organization and functioning of the employment service and in the formulation of the employment service policy.
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> *Article 6(d).* The Government states in its report that the employment services are in charge of all the activities laid down in *Article 6*, with the exception of those listed in 6(d). The Committee would be grateful if the Government would describe in its next report the measures taken to apply this provision of the Convention which lays down that the employment service must "cooperate in the administration of unemployment insurance and assistance and of other measures for the relief of the unemployed".
>
> *Article 7.* In its report, the Government highlights the difficulties encountered in applying the provisions of this Article concerning, particularly, specialization by occupations and by industries within the various employment offices, and difficulties relating to the problem of lack of supervision in the employment services which are being set up in the various regions of the country. The Committee would be grateful if the Government would give detailed information in its next report on the measures taken to apply this Article and specify the particular occupations, industries and categories of applicants for employment for whom special measures have been taken or are envisaged.

Argentina (ratification: 1956)

1. The Committee notes that the National Employment Service has been transformed into a public employment agency (APC), resulting in the establishment of labour intermediation units. In December 1996, the Programme Management Coordination Unit was established with the function of coordinating the operation of labour and employment training programmes of the Secretariat of Employment and Vocational Training. The Committee trusts that the Government will continue to discharge the essential duty of the employment service, with a view to the best possible organization of the employment market, and will review it to meet the new requirements of the economy and the active population *(Articles 1 and 3 of the Convention)*. In this respect the Committee hopes that in its next report the Government will be able to provide statistical information available in published annual or periodical reports concerning the number of

public employment offices established, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by such offices, as requested in *Part IV of the report form*.

2. *Articles 4 and 5*. In reply to the comments which it has been making for many years, the Government states that measures have not currently been adopted for the establishment or functioning of advisory committees. The Committee trusts that the Government will be able to indicate in its next report that the committees required by the Convention are operational so as to give full effect to the above provisions of the Convention, which provide for the cooperation of representatives of employers and workers through advisory committees in the organization and operation of the employment service and in the development of employment service policy.

[The Government is asked to report in detail in 2000.]

Bolivia (ratification: 1977)

The Committee notes the Government's report. The Government regrets that no overall employment service within the meaning of the Convention has been established. However, the current administration is in the process of implementing a programme of modernization in the field of labour relations, including a subprogramme for modernizing labour administration and strengthening the department responsible for the employment service. The Ministry of Labour has given instructions that its annual programme of work should place greater emphasis on employment. This will require giving greater powers to departmental managers and the establishment of regional employment units to cover requirements over the entire national territory. The Committee trusts that the technical assistance which the Government wishes to obtain will enable it to give effect to the provisions of the Convention and to reply to the following points which were brought up in the Committee's observation of 1995.

Articles 1 to 5 of the Convention. The Government has already stated its intention to establish an overall employment service in the form set out in these Articles. The Committee therefore reiterates its hope that the Government will be able to supply information on the extent to which effect has been given to the above Articles of the Convention, with particular emphasis on the creation of a network of local and, where appropriate, regional offices, as well as the arrangements made through advisory committees for the cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of the employment service policy.

Articles 6, 7 and 8. The Committee again asks the Government to continue to supply information on efforts being made to expand the functions of the employment service, indicating, in particular, measures taken to facilitate specialization by occupations and by industries and to meet adequately the needs of particular categories of applicants for employment, in accordance with these Articles. Please also furnish statistical information on the number of applications of employment received, the number of vacancies notified and the number of persons placed in employment, as requested in *Part IV of the report form*.

[The Government is asked to report in detail in 2000.]

Costa Rica (ratification: 1960)

The Committee notes the Government's detailed report which includes a report for the first semester of 1997 of the activities of the National Employment Agency. The

Committee notes with interest the adoption of Decree No. 26339-MTSS of 1 September 1997 establishing the Technical Services Employment Council whose role is to coordinate, assess and provide information in employment matters in order to maintain adequate knowledge of the employment market. The Committee would be grateful if the Government would indicate whether it has adopted the Regulation with respect to the organization and operation of the Technical Services Employment Council which provides for the cooperation of representatives of workers and employers in the organization and operation of employment services as laid down under *Articles 4 and 5 of the Convention*. The Committee reiterates its hope that the necessary arrangements shall be made in the near future, through the advisory committees, the cooperation of the representatives of employers' and workers' organizations in the development of the programme and general policy of the employment service. The Committee trusts that the Government will indicate the measures adopted in this regard and provide the information requested in *Parts IV and VI of the report form* for the Convention.

Democratic Republic of the Congo (ratification: 1969)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 3 of the Convention*. The Committee notes that, according to the information supplied by the Government, it has not been possible to continue the work begun in 1986 of establishing employment offices and that existing offices are experiencing operating difficulties due to lack of qualified staff and equipment. The Committee can only reiterate the hope that the Government will be able to take the measures necessary to allow the network of employment offices to operate and develop in accordance with the provisions of this Article of the Convention and will be able to supply the relevant information.
>
> *Articles 4 and 5*. The Committee notes that the draft ordinance establishing the new National Employment Service, which, according to the Government, would ensure the cooperation of employers' and workers' representatives in accordance with *Articles 4 and 5*, has still not been adopted. It requests the Government to indicate in its next report in what way the consultations prescribed are conducted in practice and provide the Office with the text of the ordinance once it is adopted.
>
> The Committee notes that the Government indicates that it will be able to supply in its next report the statistical information required.

Djibouti (ratification: 1978)

The Committee notes with regret that, for the fourth year in succession, the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes that many of the Articles of the Convention are still not being applied.
>
> *Article 3 of the Convention*. The Government states once again that no measure has been taken to set up a sufficient number of employment offices, despite the provisions of section 41 of Act No. 21/AN/83 first L of 3 February 1983 to organize the central administration of the Ministry of Labour and Social Welfare. The Committee notes that no progress has been achieved in this respect for several years and once again hopes that the appropriate measures will be taken in the near future to give effect to this Article of the Convention, and to the above provisions of the national legislation. It requests the Government to supply information on any progress achieved in this respect in its next report.
>
> *Articles 4 and 5*. In its previous comments, the Committee noted that no arrangements had been made through the advisory committee provided for in section 162 of the Labour Code currently in force to involve the social partners in the organization and operation of the

National Employment Service. The Government's report provides no new information on this aspect. The Committee therefore once again hopes that the Government will not fail to take the necessary steps in the very near future to give full effect to these Articles, which provide that suitable arrangements shall be made through advisory committees for the cooperation of representatives of employers and workers in the organization and operation of the employment service, and consultation with these representatives in the development of employment service policy. The Committee trusts that the Government will be able to describe in its next report the measures which have been taken or are envisaged and the progress which has been achieved with a view to ensuring conformity with these provisions of the Convention.

Articles 7 and 8. In its previous report, the Government stated that no measures had been taken to give effect to these Articles owing to the lack of qualified managerial staff in the placement division. The Committee nevertheless hoped that the Government would do its utmost to take appropriate measures in the very near future to meet the needs of particular categories of applicants for employment, such as persons with disabilities and juveniles, in accordance with these Articles. It hopes that the Government will be able to describe the progress achieved on these points in its next report.

Article 9, paragraph 4. The Committee notes from the Government's report that the project for the specialized training of managerial staff, financed by the EC and the World Bank, has come to an end. It would be grateful if the Government would indicate any action taken to continue the provision for adequate training of staff for the performance of their duties in the employment service, in accordance with these provisions of the Convention.

Part VI of the report form. The Committee would be grateful if the Government would continue to supply information on any practical difficulties encountered in the implementation of the Act of 1983 and in the application of the Convention. The Government may find it helpful to have some assistance from the ILO on certain aspects of the application of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action measures in the very near future.

Dominican Republic (ratification: 1953)

In its observation of 1995, the Committee referred to the Government's previous information that the National Employment Commission remained inoperative, and to the modest role played by the General Directorate of Employment and Human Resources of the State Secretariat for Labour on the Dominican labour market. The Committee takes note of the Government's recent report, to the effect that thanks to the collaboration of the ILO, the Employment Service has launched an electronic exchange on the Internet which provides personal data, information on diplomas and certificates, addresses and telephone numbers of persons seeking employment. In collaboration with the San José multidisciplinary team and the ILO Area Office in Mexico, plans of action aimed at improving the organization of the labour market have been drawn up. The Committee trusts that the Government will continue to provide information on these activities, which broadly implement the provisions of *Articles 1, 2 and 3 of the Convention*, in such a way as to ensure that the network of employment offices can meet the new requirements of the economy and of the working population.

Articles 4 and 5. The Committee takes note of Decree No. 381-96 of 28 August 1996 transforming the tripartite National Employment Commission into a body able to discharge its responsibilities effectively. In addition, three tripartite Regional Employment Committees have been set up. The Committee notes the main areas of activity identified for 1998 (development of institutions, training, social and labour diagnostics and information, and development and implementation of job-creation programmes). The Committee requests the Government to continue to provide information in its future reports on any specific arrangements made through the National Employment Commission and the Regional Employment Committees in the areas covered by the Convention.

Article 6 and 7. With regard to the functions of the employment service *(Article 6(c) and (e))*, the Committee has taken note the analysis, carried out in 1995 by the country's Central Bank, of the measurement of employment on the basis of household surveys, and of the employment statistics for 1997 provided by the Government. The Committee trusts that the Government will continue to develop the activities required by the Convention and provide the relevant information in this respect.

In a separate direct request, the Committee is raising a matter relating to the application of *Article 9* of the Convention.

Egypt (ratification: 1954)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the information supplied by the Government concerning the Central Council for Manpower and Training. It has also been informed of the establishment of the Manpower and Training Planning Commission (in 1992), and the High Committee for Labour and Production Incentives (in 1995). The Committee would be grateful if the Government would state whether these bodies are consulted on the organization and operation of the employment service and on employment service policy and, if not, indicate what arrangements exist, in practice, to ensure the cooperation of representatives of employers and workers in these matters, in accordance with the provisions of *Articles 4 and 5 of the Convention*.
>
> The Committee also notes in this connection that sections 76 (Central Advisory Labour Council) and 79 (local and sectoral advisory employment committees) of Act No. 137, 1981, are amended in the new draft Labour Code. It asks the Government to provide information on any developments in this respect.
>
> 2. The Committee hopes that in its next report the Government will not fail to provide the statistical information referred to in *Part IV* and a general appreciation of the manner in which the Convention is applied referred to in *Part VI of the report form* adopted by the Governing Body.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

New Zealand (ratification: 1949)

The Committee notes the Government's report and the comments of the New Zealand Council of Trade Unions (NZCTU) and the New Zealand Employers' Federation (NZEF) communicated by the Government.

The NZCTU expresses its concern at the Government's non-observance of *Articles 4 and 5 of the Convention*, which provide for the cooperation of representatives of employers and workers in the operation and organization of the employment services, as well as in the development of the general policy, which must be secured by means of advisory committees. The NZCTU states that no such advisory committees are in existence and that the Government, within its overall philosophy that trade unions have no special role in the industrial relations or employment policy, has no intention of developing such an advisory framework. In its response, the Government points out that the employment service has, for some considerable time, been operated by a central government department under a minister who is accountable to Parliament, and that employers' and workers' organizations contribute to the development of appropriate legislation which is submitted to the competent parliamentary select committee. Moreover, the Government considers that the strategy to regionalize employment services, described in its report, is dependent on the contribution of all concerned at regional level and, in particular, the contribution of employers and workers.

The Committee is bound to emphasize that the informal or ad hoc consultations of employers' and workers' organizations mentioned by the Government would be insufficient to give effect to the provisions of *Articles 4 and 5*, which require the appointment of advisory committees to the public employment services. The Committee expresses its concern at this lack of appropriate arrangements for consultation, which would seem to demonstrate a suppression of tripartite dialogue in matters of employment policies. The Committee also refers to the comments of a similar nature it has made for a number of years concerning the application of Convention No. 122. The Committee trusts that the Government will adopt the necessary measures in the near future to give full effect to these essential provisions of the Convention.

The Committee notes that the NZEF considers that there would be merit in considering the extent to which this Convention still serves a useful purpose, particularly given the increasing role of fee-paying employment agencies in the provision of employment information. In this respect, the Committee recalls that the Convention does not prevent the development of private employment agencies. The Committee draws the Government's attention to the provisions of the Private Employment Agencies Convention, 1997 (No. 181), and the Private Employment Agencies Recommendation, 1997 (No. 188), in respect of cooperation between the public employment service and private employment agencies.

Peru (ratification: 1962)

The Committee notes the Government's report which contains information on the points raised in the Committee's observation of 1997.

1. *Articles 4 and 5 of the Convention*. The Committee had expressed its confidence that the Government would ensure that suitable arrangements would be made for the cooperation of representatives of employers and workers in the organization and operation of the employment service and in determining its general policy. The Government in its report refers to a plan to reform the public employment service by establishing a labour information system. The Committee observes again that, in order to give effect to these provisions of the Convention, it is necessary to establish advisory committees for the cooperation of representatives of employers and workers in the development of the programme and general policy of the employment service. The Committee trusts that the labour information system which the Government wishes to establish will enable it in the near future to comply fully with these important provisions of the Convention.

2. *Article 8*. The Committee notes the information provided on the youth training programme PROJoven for training young people between the ages of 16 and 25 years in various occupations. The Committee would be grateful if the Government would continue to provide information on the measures taken for young people in the context of employment services and vocational guidance.

[The Government is asked to report in detail in 2000.]

Philippines (ratification: 1953)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Articles 4 and 5 of the Convention.* The Committee notes that, in the Social Reform Council, certain categories of people (farmers, workers in the informal sector, people with disabilities, youth, senior citizens, etc.) as well as non-governmental organizations, are consulted on social assistance programmes for which, according to the Government, the PESOs will be responsible. Nevertheless, according to the information supplied by the Government, the Committee is bound to note that the advisory committees provided for in the Convention have still not been established. It once again requests the Government to adopt appropriate measures to ensure cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of employment service policy, and to provide in its next report information on any progress.
>
> The Committee hopes that the Government will also be in a position to give indications concerning the measures taken to overcome the administrative and financial difficulties encountered by the PESOs and on the practical application of *Articles 6, 7 and 8* of the Convention.

Sao Tome and Principe (ratification: 1982)

The Committee notes with regret that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its direct request, which read as follows:

> The Committee notes that the public employment service in Sao Tome and Principe is free of charge *(Article 1, paragraph 1, of the Convention)*. It hopes that in its next report the Government will supply further information on a number of points that have already been raised in its previous direct request and, particularly, on the arrangements made in accordance with *Articles 4 and 5* to ensure the cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of employment service policy. Please also continue to supply statistical information and the other published information indicated in *point IV of the report form* on the work of the CNE respecting the appropriate measures to be taken in accordance with the provisions of *Article 6(b), (c) and (e)* of the Convention.

Sierra Leone (ratification: 1961)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes from the Government's report that the draft Employment Service Regulations to which the Government has been referring since 1974 have still not been adopted. The Government indicates once again that the question of the adoption of the draft Regulations is still on the agenda of the next meeting of the Joint Consultative Committee.
>
> The Committee reiterates its hope that the new provisions will be adopted in the very near future and that the next report will contain the information previously requested on: (a) the setting up of national, and where necessary regional and local, advisory committees ensuring the participation of employers' and workers' representatives in equal numbers in the organization and operation of the employment service and in the development of the general policy of this service, in accordance with *Articles 4 and 5 of the Convention*; and (b) the determination of the functions of the employment service in accordance with *Article 6*.

Venezuela (ratification: 1964)

1. The Committee notes the Government's report for the period ending 31 May 1998. The report contains information on the points raised in the recommendations of the Committee set up by the Governing Body to examine the representation made by the International Organization of Employers (IOE) and the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS) under article 24 of the ILO Constitution (document GB.256/15/16 of May 1993). The Government refers to the first national tripartite agreement reached on 17 March 1997 which states the need to strengthen the Employment Service of the Ministry of Labour with a view to improving its potential as an instrument of employment policy. The agreed employment plan, which was signed on 16 December 1997, establishes the need to strengthen labour mediation, reorient vocational training policy, promote the employment of disabled people and develop a pilot programme of employment reference and support centres. The Committee notes this information and also notes that these basic elements should make it possible to give effect to the provisions of the Convention. The Committee therefore requests the Government to keep it informed of any progress made to ensure that the essential functions of the employment service are maintained, in accordance of *Article 1 of the Convention*.

2. The Committee again refers to the following points that were raised in the recommendations of the tripartite Committee:

(i) The Government indicates that, with regard to section 597 of the Organic Labour Act, it does not consider it appropriate at the moment to set up local advisory committees owing to the restructuring of the National Employment Service. However, the National Employment Council has been set up and will serve as a basis for the establishment of local committees in the future. The Committee trusts that the Government will continue to provide information on the measures taken by the National Employment Council with regard to the employment service. It also requests the Government to indicate the number of advisory committees established at the national and regional levels, how they are constituted, and what procedure has been adopted for appointing employers' and workers' representatives. To allow an assessment of the effect given to *Articles 4 and 5* of the Convention, the Government is requested to provide information on the arrangements made through these advisory committees for the cooperation of representatives of employers and workers in the organization and operation of the employment service, and in the development of the general policy of the employment service.

(ii) The Committee recalls that the tripartite Committee invited the Government to furnish information on the measures taken, in collaboration with employers' and workers' organizations, in accordance with *Article 10* of the Convention, to encourage full use of employment service facilities by employers and workers on a voluntary basis. The Committee notes that, within the framework of the plan to establish four employment reference and support centres, a programme of meetings and exchanges with the most representative sectors of the workers and employers has been commenced. The Committee asks the Government to continue to provide information on the results achieved by the afore-mentioned plan.

3. The Committee recalls that the recommendations of the tripartite Committee included an invitation to the Government to amend the text of section 604 of the Organic Labour Act in order to avoid any ambiguity in its interpretation and application and bring it fully into line with *Articles 4 and 5* of the Convention, which provide for no distinction between employers' and workers' organizations with regard to their cooperation in the

organization and operation of the employment service. The Committee would be grateful if the Government would indicate its position in this regard.

4. The Committee urges the Government to continue to adopt measures to give full effect to the provisions of *Articles 4, 5 and 10*, and also hopes that the Government will provide a detailed report on the application of the Convention including statistical information, annual or periodic reports, and information on the number of public employment offices, applications for employment received, offers of employment notified and job placements made by the offices, as requested in *Part IV of the report form*.

[The Government is asked to report in detail in 2000.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Belarus, Belize, Brazil, Colombia, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Finland, Guatemala, Guinea-Bissau, Hungary, India, Libyan Arab Jamahiriya, Lithuania, Mozambique, Nicaragua, Nigeria, Panama, San Marino, Spain*.

Convention No. 89: Night Work (Women) (Revised), 1948 [and Protocol, 1990]

India (ratification: 1950)

In its previous comments, the Committee has been commenting on the exemptions made to the prohibition of night work of women under section 66 of the Factories Act, 1948. It notes the Government has supplied further information regarding exemptions granted to factories of various sectors in different states.

The Committee also notes the Government's statement in the report that these exemptions are in conformity with the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89). It points out that the Protocol of 1990 has not so far been ratified by India, and that the Government therefore has the obligation to ensure the application of the provisions of the Convention and not the Protocol, as long as the latter has not been ratified.

The Committee recalls once again that under *Article 5 of the Convention*, the prohibition of night work for women may be suspended only when, in case of serious emergency, the national interest demands it and after consultation with the employers' and workers' organizations concerned. It asks the Government to provide information on the measures which have been taken to bring practice into conformity with national laws and the international commitments which have been undertaken.

Convention No. 90: Night Work of Young Persons (Industry) (Revised), 1948

Information supplied by *Lithuania* in answer to a direct request has been noted by the Committee.

Convention No. 91: Paid Vacations (Seafarers) (Revised), 1949

Requests regarding certain points are being addressed directly to the following States: *Algeria, Djibouti, Guinea-Bissau*.

Convention No. 92: Accommodation of Crews (Revised), 1949

Algeria (ratification: 1962)

In its earlier comments, the Committee noted the provisions of the Maritime Code (Ordinance No. 76-80 of 23 October 1976 concerning crew accommodation on board ships) and requested the Government to provide copies of any implementing texts fixing detailed conditions for the accommodation of the crew (section 446 of the Maritime Code). While noting the information provided by the Government in its last report according to which at the time when vessels are being put into operation before being registered, they are checked for compliance with international standards relating to hygiene and living conditions, the Committee notes that the detailed provisions implementing *Articles 6 to 17 of the Convention* have not been adopted. Recalling that, under the terms of *Article 3, paragraph 1,* legislation to ensure the application of *Parts II, III and IV* of the Convention must be maintained in force, the Committee reiterates its hope that the necessary action will be taken in the very near future.

Iraq (ratification: 1977)

The Committee has been pointing out for several years that while some legislation exists referring in general terms to inspection in the Civil Marine Service and dealing with some specific aspects of working conditions, there appear to be no detailed laws and regulations applying the Convention. The Committee notes that the Government's latest report provides no further elements in response to its previous comments. The Committee recalls that under *Article 3, paragraph 1, of the Convention* a ratifying Member undertakes to maintain laws or regulations which ensure the application of the provisions of Part II (Planning and control of crew accommodation), Part III (Crew accommodation requirements) and Part IV (Application of Convention to existing ships) of the Convention. The Committee again expresses the hope that the Government will take the necessary measures in law and practice to apply the Convention.

Liberia (ratification: 1977)

The Committee notes with regret that once again the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes that, whilst certain provisions have been supplied in relation in particular to the inspection of crew accommodation, there appears still to be none of the detailed regulation of crew accommodation required by *Part III of the Convention*. The Committee hopes that the legislation necessary to ensure the application of the Convention in full will soon be enacted, and that the Government will supply a report including full details.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Panama (ratification: 1971)

For a number of years, the Committee has been commenting on the application of the provisions of the Convention, in particular *Article 2(a) and Article 5(a)*. It noted previously the Government's indications concerning the draft revision of maritime legislation under way, and in its general observation in 1997 noted that the draft had been commented on by the Committee on a number of occasions and that its conformity with the maritime Conventions ratified by Panama had been discussed by the Conference Committee on the Application of Standards.

The Committee notes the adoption of Legislative Decree No. 8 of 26 February 1998 issuing the Regulations respecting maritime work at sea and on inland waterways. It also notes Legislative Decree No. 7 of 10 February 1998 concerning the establishment of the Panama Maritime Authority, the unification of various maritime responsibilities of the public authorities and the adoption of other provisions.

As regards the application of the provisions of this Convention, the Committee notes that Chapter V (sections 59-67) of Legislative Decree No. 8 concerns accommodation and food.

The Committee notes that section 59 of the Legislative Decree provides that the shipowner must provide on-board crew accommodation that is suitable, ventilated and well lit, adequate for the number of crew members and reserved for their exclusive use; the Maritime Authority is required to specify the conditions of accommodation, taking into account the international Conventions ratified by Panama or national legislation in this area.

The Committee also notes that section 60 provides that inspections must be carried out to ensure application of section 59, taking into account the directives adopted by the Panama Maritime Authority.

The Committee notes that, under section 62 of the same Legislative Decree, standards for a system of inspection, in particular inspection of food and water supplies, are to be established by the Panama Maritime Authority. The Committee notes in this regard that, under the provisions of sections 12 and 33 of Legislative Decree No. 7, the Panama Maritime Authority (which is an autonomous state body) includes a General Seafarers' Directorate, whose responsibility it is to inspect the working, living and accommodation conditions of ships' crews with a view to ensuring the rigorous application of laws and ratified international Conventions on work at sea and on inland waterways to produce a written report to the competent authorities indicating any anomalies or infractions noted and to recommend appropriate sanctions.

The Committee requests the Government to provide information, including any relevant texts that are adopted, on the following:

(1) the conditions of accommodation laid down by the Maritime Authority in implementation of section 59 of Legislative Decree No. 8;

(2) the directives adopted by the Maritime Authority under section 60 of Legislative Decree No. 8 for carrying out inspections;

(3) measures taken or envisaged to ensure application of the following provisions of the Convention, to which the Committee has been referring for a number of years: *Article 6, paragraph 8* (fire-prevention); *Article 9, paragraph 3* (additional lighting); *Article 10, paragraphs 4, 5, 6, 8 and 9* (sleeping rooms); *Article 11, paragraphs 1, 2, 3 and 4* (mess-room accommodation); and *Article 13, paragraphs 1, 2, 3, 4 and 5* (sanitary facilities);

(4) inspections carried out on board vessels registered in Panama with a view to verifying their conformity with the Convention, including particulars of any infractions noted by vessel, any further inspections carried out and sanctions imposed *(point V of the report form)*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Australia, Azerbaijan, Cyprus, France, Germany, Russian Federation, Spain, Tajikistan, Ukraine*.

Convention No. 94: Labour Clauses (Public Contracts), 1949

Brazil (ratification: 1965)

In its previous observation, the Committee noted Act No. 8883 of 8 June 1994 and Normative Instructions of the Secretariat for the Federal Administration (SAF) No. 8 of 26 August 1994, and No. 13 of 21 October 1994, relating to standards on public administration tenders and contracts. It noted that the provision of section 44, paragraph 3, of Act No. 8666 of 21 June 1993, as amended by Act No. 8883, is still maintained, according to which a contract proposal can be accepted only if the overall or partial sums it contains are compatible with the prices of inputs and market wages. It further noted that Normative Instruction No. 8 includes provisions that the cost of labour remuneration in a contract proposal should refer to the remuneration fixed for the occupational category by collective labour agreements or other equivalent, including wages and other advantages established in labour legislation. The Committee considered that these provisions serve the purpose of ensuring to the workers employed by public contractors that the level of wages is not less favourable than the prevailing market wage.

The Committee however pointed out that the requirements of *Article 2, paragraphs 1 and 2, of the Convention* relate not only to the level of wages but also to the labour conditions such as hours of work and holidays. It therefore requested the Government to indicate the measures taken or envisaged to ensure that the workers concerned also enjoy labour conditions other than wages that are not less favourable than normally observed for a similar kind of work in the district.

The Committee notes that further information has been supplied by the Government concerning the efforts to regulate certain aspects of public contractors, for example regarding social security. The Government also mentions fringe benefits such as transport coupons and food tickets to be provided by public contractors engaged by the Federal Administration for cleaning and security guard services. The Committee notes, however, that such measures are not sufficient to fulfil the above-mentioned requirement of the Convention. It again recalls that the Convention stipulates, for this purpose, the insertion of appropriate labour clauses in public contracts, and suggests that the Government consider consulting the International Labour Office on further necessary steps to apply the Convention in this respect.

The Committee also requests the Government to supply information on the application of the Convention in practice, including, for instance, extracts from official reports, and cases in which tenders for public contracts have been refused because of the incompatibility of the calculated cost with market wages, under section 44, paragraph 3, of Act No. 8666.

Democratic Republic of the Congo (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

> The Committee noted that in its previous report the Government repeated, as it had for years, that the legislative text would be communicated as soon as it has been brought into line with the provisions of the Convention.
>
> The Committee recalls that it has addressed the application of this Convention in its comments for many years and that in 1976, at the Government's request, the International Labour Office sent a draft of new provisions which might be incorporated into the existing legislation in order to give effect to the Convention. However, despite repeated assurances from the Government that it would adopt the necessary texts to give effect to this Convention, no such texts have as yet been adopted.
>
> The Committee again strongly suggests that the Government take the necessary steps to ensure that the text designed to give effect to the Convention, for which preparations started in 1979, is adopted in the near future.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Ghana (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which is as follows:

> The Committee noted the specimen of a certificate which a company tendering for a public contract must obtain as a prerequisite for the award of such contract. It certifies that the tenderer has duly informed itself from the Labour Department about all requirements and regulations affecting workmen in the country, and has no record of labour law violation, particularly as regards payment of wages, workmen's compensation and hours of work. The Committee points out, however, that the essential purpose of the insertion of labour clauses in public contracts under the Convention goes beyond the aims of the certificate system; its purpose is to eliminate the negative effects of competitive tendering on the workers' labour conditions.
>
> The Committee noted in this regard that the Government referred to the discussion of the matter by the tripartite National Advisory Committee on Labour with a view to bringing the national legislation into conformity with *Articles 2 and 5 of the Convention* (inclusion of labour clauses in public contracts, and application of adequate sanctions and measures to ensure the payment of wages). Recalling that the Government has been referring to its intention of changing legislation since 1991, the Committee hopes that progress will be reported in the very near future. It suggests that the Government consider consulting the International Labour Office on necessary steps to apply the Convention in this respect.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Mauritius (ratification: 1969)

Further to its previous observation, the Committee notes the Government's report, including information on the application of some of the provisions of the Convention. It notes the indication in the report that it embarked on a labour law reform project with the technical assistance of the ILO, and that the revision of the Labour Act included in this project, will eventually be submitted to the National Assembly.

The Committee recalls that, for a number of years, the Government has been indicating its intention to revise the 1975 labour legislation. It also recalls that the Labour Act of 1975 repealed the Labour Clauses in Public Contracts Ordinance of 1964, which had previously given effect to the provisions of the Convention. The Committee again suggests that the Government consider the possibility of taking the provisions of the above Ordinance into account in the review of the Labour Act.

The Committee can only reiterate the hope that the Government will take all necessary steps to ensure that amendments to the Labour Act are adopted in the near future in order to ensure the insertion of labour clauses in public contracts in accordance with *Article 2 of this Convention*, and it asks the Government to report any progress made.

Panama (ratification: 1971)

Further to its previous observation, the Committee notes the Government's report and the attached documents, including Act No. 56 of 1995 concerning public contracts.

According to the Government's report, although the said Act does not include a provision requiring the insertion of labour clauses in public contracts, the Ministry of Work and Labour Development (MITRADEL) has elaborated a draft Bill to add a provision in section 28 of Act No. 56 so as to bring it in conformity with the Convention. In addition, the National Economic Council (CENA), whose function includes granting of favourable opinion on contracts for an amount between B/.250,000 and B/.2,000,000, considers it prudent that, pending the enactment of the above Bill, its requirement should be included in public contracts. CENA has authorized the Ministry of Finance, which is the body to set standards and inspect the system, to circulate to all public bodies the instruction concerning this requirement of public contracts.

The Committee takes due note of this information. It requests the Government to continue to provide information on any progress made towards the adoption of the above Bill, and to send a copy of it when adopted, as well as that of any instruction issued by the Ministry of Finance with regard to the inclusion of labour clauses in public contracts.

As to the questions raised in the previous direct request regarding the specifications of public tenders (model articles and conditions), the Committee notes the indication in the Government's report that the specifications are no longer in force since the adoption of Act No. 56. It asks the Government to supply information on any equivalent documents under the new Act.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Burundi, Djibouti, Norway, Saint Lucia, United Republic of Tanzania*.

Convention No. 95: Protection of Wages, 1949

Argentina (ratification: 1956)

1. The Committee notes that, during its current session, some information, sent by fax, was received from the Government in reply to its previous observation. This was in addition to the information earlier supplied by the Government in reply to the question of the practical application of the Convention in the *maritime sector*, raised in the comments made by the Union of United Maritime Workers (SOMU), concerning a fishing and deep-freezing company. The Committee notes the Government's indication that, following the conclusion of a collective agreement, in the majority of the enterprises in the said sector, the problems of payment of wages have been resolved. The Government also states that the payment of a part of wages is still made only after finishing each catch (*marea*) as the definitive calculation is not possible before the end of the operation. The Committee

requests the Government to continue to include information on the maritime sector and in particular the fishing subsector, when providing information on the practical application of the Convention.

2. *Settlement of the debts of the State.* The Committee noted in an earlier observation, Decree No. 1639/93 of 4 August 1993, which was intended to speed up the procedures for the settlement of debts of the State, including wage arrears owed to workers in the public service, up to 1 April 1991 which were consolidated under the terms of Act No. 23982 and recognized by the courts. It noted the indication of the Government that the application of this Decree had been accelerated and that the market value of the coupon (BOCON), which is used also for settling wage arrears, is higher than the nominal value. The Committee notes that, according to the Government, the situation has become normal and that there remains only some procedures to settle the debts caused by miscalculations. Once the procedures have been finished and when the debts are recognized, they are paid by BOCON. The Committee requests the Government to continue to supply information on the progress made in this matter as regards the settlement of the wage arrears owed to workers in the public service.

3. *Deferred payment of wages.* In its earlier observations, the Committee noted the comments made by the Confederation of Educational Workers (CTERA) and the Union of Educational Workers of Rio Negro, concerning the deferred payment of wages which are due. The Committee noted the Government's statement that in a large part of the provinces, the situation of wage payment in the public sector was slowly normalizing, as a consequence of measures taken by local administration to improve its financial situation, that in general the situations of deferred payment had been decreasing and that no new complaints in this regard had been registered.

The Committee notes the information supplied by the Government at the last minute, according to which the situation of wage payment by local public administration has become normal except for some delays noticed in the province of Jujuy. It requests the Government to continue to supply information on the situation of wage payment in the provinces, and any measures taken to ensure the regular payment of wages in accordance with *Article 12(1) of the Convention.*

4. The Committee notes that, since its previous session, certain workers' organizations have sent in new observations concerning the application of the Convention, viz.: (i) the Association of the Teachers of Santa Cruz (ADSC), in their communication dated 2 April 1998, mentions the system of allowance connected with attendance ("bonificación por presentismo"); (ii) the Union of Press Workers of Buenos Aires (UTPBA) refers to Convention No. 95 among others in their communication dated 16 June 1998 regarding the Government's plan to repeal special legislation on journalists. The Committee notes the UTPBA's reference to clandestine labour and the assimilation to autonomous entrepreneur, and requests the Government to refer to *Article 2 of the Convention* on the scope of the Convention. The Committee notes that the Government is preparing its comments on the observations made by these organizations. It hopes that they will be communicated in due course so as to be examined at its next session.

5. In the absence of information from the Government in reply to the following questions raised in the previous observation, the Committee is obliged to repeat it as follows:

> *Benefits to improve the nutrition of workers and their families.* The Committee earlier noted Decrees Nos. 1477/89 and 1478/89 respecting benefits to improve the nutrition of the worker and his family, as well as Decree No. 333/93 enumerating the benefits that do not have the character of remuneration. It pointed out that these "benefits", however they are

termed (bonuses, supplementary benefits, etc.), constituted components of remuneration in the sense of *Article 1 of the Convention*, and requested the Government to ensure that these benefits should be subject to the measures set out in *Articles 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 16* of the Convention. In the previous observation, the Committee noted that Decree No. 1477/89 was repealed by virtue of Decree No. 773/96 of 15 July 1996, which refers in the preambular part to the comments by the ILO supervisory bodies.

The Committee notes from the information supplied by the Government, that by virtue of section 6 of Act No. 24,700 of 25 September 1996, the above-mentioned Decree No. 773/96 was repealed and that section 103bis of the Act on Labour Contract, as amended by the same Act, establishes a concept of "social benefits" of "non-remunerative" character with a view to improving the quality of life of the employee and the family, which includes the food coupons and food baskets up to the value of 20 per cent of the gross remuneration for workers covered by collective agreements and 10 per cent for others.

The Committee notes with regret that this new legislation brings the situation back to that of discrepancy with the requirements of the Convention mentioned at the beginning. It notes the Government's explanation that the repealed Decree No. 773/96 was causing disadvantages to workers because employers stopped to grant such benefits as soon as they were considered part of wages, as this resulted in the increase of employer's contributions and thus the labour cost. The Committee draws the Government's attention to the distinction between the protection that the Convention affords as regards wages and the question of calculating social security or other contributions. As regards the latter, the Committee points out that the definition or scope of wage as the basis for calculation of social contributions is outside the scope of this Convention. It requests the Government to re-examine the matter and to take all necessary measures to protect the payment of all components of remuneration as defined by *Article 1*, including benefits in the form of food or related coupons, as set out in *Articles 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 16 of the Convention.*

Application in practice. The Committee hopes that the Government will continue to provide information on the application of the Convention in practice and measures taken to ensure it, in accordance with *Article 16 of the Convention*, including information on any difficulties encountered.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future and communicate the relevant information in due time.

[The Government is asked to report in detail in 1999.]

Brazil (ratification: 1957)

1. *Non-payment of wages.* In its previous comment, with reference to the observation jointly made by the Union of the Technical Assistance and Rural Development Workers of the State of Minas Gerais (SINTER) and the Federation of Unions and Associations of Rural Development Workers of Brazil (FASER) concerning non-payment of wages by the Technical Assistance and Rural Development Enterprise (EMATER) of the State of Minas Gerais, the Committee requested the Government to provide information on any further progress made towards the settlement of the amounts due to the remaining 56 ex-employees of EMATER in accordance with *Article 12(2) of the Convention*.

The Committee notes the Government's statement in reply that those last 56 workers' cases are still being examined by the judiciary and requests the Government to continue to supply information on any progress made in the settlement of outstanding amounts due, and also on measures taken or envisaged, if there are any, to ensure the application of the Convention in equivalent bodies in other states than Minas Gerais.

2. The Committee also notes the information supplied in the Government's report concerning legislative measures. In particular, Act No. 8860 of March 1994 amends section 458 of the Consolidated Labour Act (No. 5452 of 1 March 1943) concerning the payment of wages in the form of allowances in kind, by adding provisions which stipulate that the lodging and the food supplied as a part of wages should attain their intended purposes, and cannot exceed respectively 25 per cent and 20 per cent of the contractual wage. Act No. 9300 of 29 August 1996 adds to section 9 of Act No. 5889 of 8 June 1973 on rural labour a provision according to which the rural labourers' wage should not include the assignment by the employer of dwelling or goods for production aimed at their subsistence and that of their family when it is provided in the written contract and notified to the relevant union of rural workers.

The Committee notes that these legislative measures have bearing on the application of some provisions of the Convention such as: *Article 4* (limitation and conditions of wage payment in kind) and *Article* 8 (conditions and limits of deductions from wages to be decided by legislation or collective agreement).

In its previous observations, with reference to its comments on Conventions Nos. 29 and 105, the Committee requested the Government to examine the situations also in the light of this Convention. It notes that the Government refers in the report to some provisions of the Consolidated Labour Act which give effect to the provisions of *Articles 6, 7, 8 and 9* of the Convention. The Committee points out however that the question is rather of the practical application than that of legislative provisions. It notes that the Government has supplied ample information with regard to Convention No. 29 including that on inspection. Noting the absence of such information regarding Convention No. 95, the Committee requests the Government to supply detailed information on the application in practice of the national legislation giving effect to this Convention, including the two new Acts mentioned above, with particular reference to the situations in rural areas, and referring also to *Articles 10 and 14* in addition to the above Articles of the Convention. It asks the Government to include information on any infringements of provisions on wage protection registered by the inspectors and the sanctions imposed in this regard.

Colombia (ratification: 1963)

The Committee previously noted the observations made by the General Confederation of Democratic Workers (CGTD). The CGTD pointed out that, in violation of the Convention, wages had not been paid for several months to workers in the state and public sectors, for example, in the Departments of Putumayo, Vinchada, Sucre and Meta, and also in the Municipalities of Tolú, Quibdó, Montería, Puerto Asis and Caicedonia. The CGTD added that, although this irregularity had been brought to the attention of the Government, in particular, the Ministries of Labour, and the Interior, and the Council of Social Policy, no action had been taken to impose sanctions or other measures to ensure the payment of wages to these workers. The Committee noted the Government's reply as regards the Municipality of Montería, Putumayo and Cartago, and requested the Government to indicate measures taken for the regular payment of wages in the other regions mentioned by the CGTD.

The Committee notes that, in reply, the Government refers to the provision of the Constitution according to which there can be no public employment without functions detailed in a law or regulations. This means that, for all public employment, there should be budgetary appropriation. The Government further states that the budgets of the territorial entities, to be adopted by the competent authority, should include a part corresponding to the payment of wages and that the Ministry of Labour and Social

Security has the competence to carry out investigations in case of non-payment of wages and to impose sanctions.

In the absence of any further information regarding the situations referred to by the CGTD, the Committee requests the Government to supply detailed information on any concrete measures taken to inquire into and rectify the non-payment of wages in the state and public sectors in the remaining regions mentioned by the CGTD, as well as information more generally on measures taken for the application in practice of *Article 12 of the Convention* concerning the regular payment of wages.

[The Government is asked to report in detail in 1999.]

Comoros (ratification: 1978)

The Committee notes the observations made by the Union of Comoros Workers' Autonomous Trade Unions (USATC) pointing out that wages have not been paid for nearly 12 months to workers by the State of Comoros, and that 52 per cent of the state officials are teachers. These observations were transmitted to the Government for its comments in February 1998. In the absence of response from the Government, the Committee invites it to send its observation on the issue raised with reference to the provision of *Article 12(1) of the Convention* regarding the regular payment of wages.

[The Government is asked to report in detail in 1999.]

Congo (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

> 1. The Committee notes that at its 268th Session (March 1997), the Governing Body adopted the report of the Committee set up to examine the representation made by the Trade Union Confederation of Congo Workers (CSTC), under article 24 of the ILO Constitution, alleging non-observance by Congo of Convention No. 95. The Governing Body invited the Government to furnish, in the reports on the application of the Convention, detailed information on: (i) the regular payment of wages to public servants and workers in public enterprises or state property; (ii) the payment of sums owing in respect of delayed wages for the period 1992-96, including the number of wage-earners affected, the nature and amount of the debts involved, the number and type of administrations and enterprises concerned in the non-payment of wages owing for this period, and the amounts of the payments made; (iii) the possible implementation of the proposal made by the Government in April 1994 guaranteeing wage debts and the methods used for the payment of arrears; and (iv) the final payment of the amounts owing in respect of wages not only to public servants whose case has been submitted to the Administrative Appeals Committee, but also to workers in public enterprises or state property who have stopped work for good.
>
> In response, the Government has provided the following information: (i) the concerted measures designed to scale down wages and indemnities in proportion to the reduction in working hours have enabled the regular payment of wages to public servants and other employees of public establishments receiving money from the state budget to be re-established. The regular payment of wages in public enterprises or state property is in the process of being established; (ii) the wages owing for the period 1992-96 to public servants will be paid gradually beginning in 1997, on the basis of the funding available. All public servants and employees of public establishments receiving money from the state budget during this period are affected and the arrears owing are estimated at 124,000,000,000 francs which represent allowances and compensations; (iii) wage debts are guaranteed since the arrears are included in the State's internal debt. They will be reimbursed partly in cash while the rest will be in the form of vouchers which may be redeemed at treasury offices; (iv) the Government has not yet completed its examination of the conclusions reached by the Administrative

Appeals Committee with regard to the non-permanent public servants struck off the civil service list. The former workers of public enterprises or state property which have been liquidated regularly receive sums in respect of the payment of their entitlements from the State.

The Committee notes this information and requests the Government to indicate the measures taken to ensure the application of the Convention in this regard.

2. The Committee also noted the information supplied by the Government concerning the question of the payment of the sums owing to the former workers of the Ogoué Mining Company (COMILOG), in particular that many political and diplomatic contacts have been established with the Government of Gabon so that it may get COMILOG to face up to its responsibilities. The Committee requests the Government to indicate the measures taken to ensure the payment of the sums owing to the COMILOG workers.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Djibouti (ratification: 1978)

The Committee notes that the observations made jointly by the Labour Union of Djibouti and the General Union of Djibouti Workers (UGT/UGTD), concerning the Act on Finance submitted to the National Assembly in March 1998 and promulgated by the Head of State on 5 April 1998, and its repercussion on the wages of January, which has been delayed. These observations were transmitted to the Government for comments in July 1998. In the absence of response from the Government, the Committee invites it to send its observation on the issue raised with reference to the provision of *Article 12(1) of the Convention* regarding the regular payment of wages. It also asks the Government to supply a copy of the Act in question.

[The Government is asked to report in detail in 1999.]

Dominican Republic (ratification: 1973)

Regarding the protection of wages in sugar plantations, the Committee earlier noted that the provisions of the Labour Code (promulgated by Act No. 16-92 of 29 May 1992) on the protection of wages are applicable to rural workers, including those in sugar plantations, by virtue of section 281, and asked the Government to provide information on its application in practice. The Committee also noted the comments received from the following workers' organizations: National Union of Agricultural Workers of Sugar and Similar Plantations (SINATRAPLASI); Union of Cane Cutters of Barahona Plant (SIPICAIBA); and Union of Workers of Agricultural and Similar Plantations of Barahona Plant (SITRAPLASIB).

The Government states in reply that measures had been taken to ensure reliable and correct weighing of the sugar cane by (a) installing computerized scales in certain sugar plantations, and (b) placing inspectors at each weighing, who are recommended by concerned non-governmental organizations.

The Government has also supplied, in reply to the Committee's previous comments, information concerning some Articles of the Convention as follows. *Article 4 of the Convention:* while the 1992 Labour Code does not contain provisions on partial payment of wages in kind, except for section 260 concerning domestic workers, yet, where, according to the Government, food or coupons for acquisition of goods are provided by some undertakings, such would be benefits complementing the payment of the wage in cash. *Article 7:* works stores do not exist in practice and what used to exist in sugar plantations have been abolished. *Articles 14(b) and 15(d):* as to the workers' information and records of wage payment, section 33 of Act No. 1896 on social security requires the employers with less than 50 workers to keep a book of wages and hours. However, according to the Government, it is expected that the State Secretariat of Labour would elaborate in the near future a document to be used as a book of wages and hours, as authorized under section 33 of Regulation No. 258-93 of 1 October 1993 concerning the application of the Labour Code. The Committee has taken due note of these indications.

With reference to the observation it made at its last session concerning Convention No. 105, the Committee recalls that the above-mentioned organizations consider that the amendments to the legislation, particularly the Labour Code and the various programmes announced by the Government, have led to no significant improvement in the conditions of Haitian workers employed on sugar plantations in the Dominican Republic. Their comments further included particular points concerning the application of the Convention: payment in wage tickets negotiable in the plantation is less common but still exists in some plantations *(Articles 3 and 7)*; it is still common to retain a part of wages until the end of the harvest *(Article 12(1)* on regular payment); individual contracts are not generalized practice and workers are not adequately informed of the conditions of remuneration *(Article 14)*.

The Committee notes that the Government has not replied to these points. It asks the Government to provide information, with particular reference to workers in sugar plantations, on measures taken to ensure the application in practice of the Labour Code and other legislative provisions concerning the protection of wages, in accordance with *Article 16* of the Convention.

Libyan Arab Jamahiriya (ratification: 1962)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which is as follows:

> The Committee noted the discussion which took place at the Conference Committee in June 1996 on the final settlement of wages due to Palestinian workers who had recently left the Libyan Arab Jamahiriya.
>
> The Government confirmed at the Conference Committee its earlier statement that all the entitlements of Palestinians working with employment permits and formal contracts had been respected at the expiry of their contract, including the entitlements arising both from employment and from social security, and this was the case for 95 per cent of the Palestinian workers. It added that the employment agencies of the Public Office for the Labour Force had not received any complaints to that date concerning the entitlements of a Palestinian worker. The Government further stated that, parallel with a meeting of the Council of the ICFTU for the Arab Trade Unions, a meeting was held in Tripoli in March 1996, attended by the Palestinian Trade Union Federation, the General Federation of the Producers' Trade Unions and the International Confederation of Arab Trade Unions, where it was agreed to look into the claims of Palestinian workers and to settle them in an amicable way and on a bilateral basis between the two federations and under the auspices of the International Confederation of Arab Trade Unions. The Government emphasized that it was ready to take all the necessary measures to settle the entitlements of any worker who could prove the existence of outstanding entitlements.
>
> Recalling that the Convention applies to all persons to whom wages are paid or payable, irrespective of the characteristics of their contracts, formal or non-formal, it requests the Government to provide information on all measures taken to ensure the final settlement of wages at the expiry of a contract, in accordance with *Article 12(2) of the Convention*, for the Palestinian workers other than those with employment permits and formal contracts.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Nicaragua (ratification: 1976)

1. The Committee has noted the Government's report, as well as the Labour Code (Act No. 185, *Official Gazette*, 30 October 1996). The Government has also supplied further information concerning the application of an Act to Create the National Payroll, including regulations made thereunder and a sample format. The Committee requests the Government to refer to the direct request it is making on certain points regarding the new Labour Code.

2. The Committee recalls that it had earlier noted the report of the Committee set up to examine the representation made by the Latin American Central of Workers (CLAT) under article 24 of the Constitution, alleging non-observance of certain Conventions, including Convention No. 95, by Nicaragua. The above-mentioned Committee, had in its report, requested the Government to take the necessary measures, in accordance with *Articles 12(1) and 15(c) of the Convention*, to ensure compliance by all enterprises with the legislative provisions such as the Labour Code relating to the protection of wages, and in particular the regular payment of wages. The Committee consequently requests the Government to supply information on measures taken pursuant to these recommendations so as to follow up the issue.

As regards the application of the Convention in practice, the Government has submitted an example of a case of labour inspection which revealed infringements of labour laws. The Government's report further states that through 422 labour inspection visits made, 178 infringements in the field of wages were revealed, which represent 13 per cent of total infringements, affecting 7,458 workers. The Committee takes due note of the information provided, but notes that no specific information has been supplied on measures to ensure the regular payment of wages in practice. The Committee therefore requests the Government to continue to supply information on any measures taken or envisaged to ensure the application of the national legislation giving effect to the provisions of the Convention, with special reference to *Article 12(1)* on regular payment of wages mentioned above, including information on the inspections made, and cases of violations reported and penalties or other sanctions imposed in accordance with *Article 15(c)* with regard to the regular payment of wages.

Russian Federation (ratification: 1961)

Further to its previous observation, the Committee notes the information supplied by the Government both in writing and orally to the Conference Committee on the Application of Standards in June 1998 and the discussions which took place in that Committee. The Committee notes with regret that the Government has supplied neither a detailed report which was requested in its previous observation, nor any further information after the one submitted in June 1998 to the Conference Committee, nor replies to the observations made by the workers' organizations mentioned below, which were transmitted to the Government for comments (the first two in August, and the last one in October).

1. *Present situation of wage arrears.* Since the Committee's previous session, further comments have been received concerning the application of *Article 12(1) of the Convention* (Regular payment of wages) from workers' organizations as follows: a communication dated 24 April 1998 from the Central Committee of Timber and Related

Industries Workers' Union of Russia states that 2 "trillion" roubles (US$334,000,000) of wages remain unpaid to the workers of the industry, amounting to the equivalent of three months' salary for all the workers. The Health Workers' Union of the Russian Federation, in a communication dated 28 May 1998, quotes the formal information received from the State Committee of Statistics of the Russian Federation, according to which the deficit in the resources for wages increased to 1,257,441,000 roubles as of 1 May 1998 from the amount of 229,436,000 roubles at 1 February 1998, and further indicates the amounts owed to the health sector workers in some regions (as of 1 May 1998, 85,487,000 roubles in Krasnoyarsk, 91,212,000 roubles in the Kemerovo region, 91,665,000 roubles in the Republic of Yakutia, 57,720,000 roubles in the Tumen region, 39,889,000 roubles in the Primorski Krai). The Education and Science Employees' Union of Russia indicates, in a communication dated 25 September 1998, that in the middle of August 1998, the total wage arrears to education workers reached 4.8 "billion" roubles (nearly US$800,000,000), constituting the average of 1.4 months' wage.

According to the information supplied by the Government to the 1998 Conference Committee, the total wage arrears at that time stood at 62,800,000,000 roubles, including 9,500,000,000 roubles of arrears due to the lack of direct financing out of the federal and regional budgets, and the amounts owed by the federal Government were not higher than 30 per cent. As to the indebtedness of enterprises financed from the regional and local budgets for 1997, the Government representative stated at the Conference Committee that the problem was practically eliminated through financial assistance of 20,000,000,000 roubles, and that in January 1998 only five regions of the Federation still had wage debts.

The Committee notes with great concern that there is no evidence of definite improvement in the situation of wage arrears, and that, on the contrary, the observations from workers' organizations, including the one received in autumn, rather point to even further aggravation of the situation.

2. *Measures taken.* With regard to the present situation of non-observance of *Article 12(1)* of the Convention, the Committee has for some years been emphasizing the importance of such means as: (i) effective supervision; (ii) imposition of appropriate penalties to prevent and punish infringements; and (iii) steps to make good the prejudice suffered.

According to the information provided by the Government to the Conference, the labour inspectorate carried out in 1997, together with the prosecutor's office, the tax inspection office, Ministries of Finance and the Police, *inspections* in 45,000 undertakings, which revealed more than 27,000 cases of violation of wage legislation and resulted in the payment of nearly 6,000,000,000 roubles. During the first five months of 1998, over 16,000 inspections made 1,700,000,000 roubles of wages paid.

Regarding *sanctions*, the Government representative to the Conference referred to the plan of draft legislation for 1998 including the elaboration of 75 draft federal laws covering, among others, the issue of the payment of wages. However, the draft laws to modify labour, administrative and criminal laws in order to increase liability for violation of wage legislation, submitted over a year ago, had not yet been adopted by Parliament. Reference was also made to a presidential decree adopted on 5 May 1998 on additional *measures to ensure payment of wages* to workers in the budgetary sphere and to improve the financial situation. In addition, a plan was approved by the Vice-Chairman of the federal Government for ensuring the resolution of the prompt payment of wages to the employees of organizations financed out of the budget.

However, the Committee notes the observation of the Health Workers' Union of the Russian Federation that the powers granted by legislation to the executive bodies in the regions allow them to have at their disposal all available financial resources including those allocated from the federal fund. The Education and Science Employees' Union of Russia considers that commitments jointly undertaken by the federal Government and local authorities to return arrears of wages are not implemented, and that no decision is taken as to how expenses should be met in federal educational establishments. Since the Government has not responded to the above-mentioned comments from the workers' organizations, the Committee invites the Government to provide its observations on the points raised.

The Committee further notes the statement of the Government made at the Conference to the effect that many managers of enterprises may be using the resources, instead of paying the wages, to resolve their financial problems at the expense of the State and their own workers. The Government admits that this could be explained by the fact that the economic, disciplinary and administrative liability for such action is inadequate as compared to the profit made.

3. In the light of the above, it is difficult for the Committee to conclude that all possible measures have been exhausted by the Government. The Committee notes that the Government tends to attribute the difficulty to various factors such as: the transition from the centrally planned to a market economy and the consequent structural reforms in the economy; the fall of prices in the international market of a series of Russia's export products; and the Asian financial crisis. It however notes the Government's positive statements that it shares the trade unions' concern about wage arrears and that the Government places its first priority on the solution of the problem of wage arrears, which could be found only in dialogue with the social partners.

The Committee therefore urges the Government to make an unequivocal and manifest commitment to put an end to this violation of the Convention, and to take all necessary measures to ensure the payment of wages on time and the rapid settlement of wage arrears already outstanding. It asks the Government to continue to supply information on them and the results achieved, by indicating concrete and specific measures taken by the Government rather than making statements of general principle.

In this regard, the Committee requests the Government to refer to the report of the committee set up to examine the representation made under article 24 of the ILO Constitution by Education International and the Education and Science Employees' Union of Russia, which was adopted by the Governing Body in November 1997, and the recommendations contained therein. It asks the Government to supply, in particular, detailed information on supervision, penalties and the settlement of wage arrears, including texts of any relevant legislation, such as the above-mentioned presidential decree and the one on the enhancement of penalties, when adopted. Please include reference to any specific measures taken to prevent the diversion to illicit purposes of funds which should be used to pay wages, in accordance with the above recommendations. The Committee would urge the Government to include information on any decision made by courts of law or other tribunals concerning the question of regular payment of wages.

4. The Committee shares the concern of the above committee which examined the representation as to the need to ensure that measures taken to reimburse wage arrears do not result in the violation of other provisions of the Convention. It notes that the Education and Science Employees' Union of Russia points out the increase in the payment of wages in kind in some regions.

The Committee notes that the Government has not replied to the previous observation concerning other provisions of the Convention such as: *Article 3* concerning the prohibition of payment with promissory notes or coupons; *Article 4* concerning the regulation of payment in kind; *Article 11* on the treatment of wages as privileged credit in the case of bankruptcy; and *Article 15* on the sanctions in case of violation. It requests the Government to indicate measures taken or envisaged to ensure not only the regular payment of wages but also the application of all the provisions of the Convention, and to supply a full report referring to each substantive provision of the Convention. It also requests the Government to include, for instance, extracts from official reports that show the number of investigations made, infringements observed and penalties imposed.

The Government is also asked to refer to the points raised in the direct request, which the Committee is repeating since no reply has been made for a few years.

[The Government is asked to report in detail in 1999.]

Turkey (ratification: 1961)

The Committee has been commenting on the application in practice of the provisions, and in particular *Article 12 of the Convention*. It notes that the Government's report was received on 4 November 1998 with comments made by the Confederation of Turkish Trade Unions (TÜRK-IŞ), and by the Confederation of Turkish Employers' Associations (TISK). The comments from TISK dated 24 June 1998 are in Turkish and would seem to mention the need for tax reform so as to protect wages. The Committee may come back to them at its next session when the complete translation has been available.

The Committee notes that TÜRK-IŞ is of the opinion (i) that wage-earners in agriculture, home working and in small establishments of artisans and petty tradesmen are not covered by the protective legislation, and (ii) that it has been a widespread practice to delay the payment of wages and other benefits for months, due to the absence of effective sanctions and the reluctance of the victims to take action against the employer because of job insecurity.

Regarding the first point, the Committee recalls that it earlier noted the adoption of Act No. 3528 of 12 April 1989, which extended the scope of the provisions of the Labour Act No. 1475, concerning the protection of wages to workers in the agricultural sector and to those in small commercial and artisanal enterprises. It asks the Government to include particular reference to workers in these sectors when supplying information on the application in practice of the Convention.

On the second point concerning the delayed payment of wages, the Committee notes the Government's indications that wage arrears observed from time to time in some municipalities irrespective of region are the results of imbalance between municipal revenues and expenditure. The Government further refers to the provisions of sections 26 and 99 of the Labour Act on the regular payment of wages and sanctions in case of violation. According to the report, during the calender year 1997, 134 undertakings were fined by the labour inspectorate under section 26 of the Labour Act, and the total of fines charged amounted to TL208,900,000 for public undertakings, and TL659,200,000 for private undertakings.

The Committee requests the Government to continue to supply, in accordance with *Article 16 of the Convention and point V of the report form*, information on the application of the Convention in practice, including information on the numbers of inspections made, infringements of the relevant provisions observed and penalties imposed, as well as any statistics of the amounts of wages due, the length of the delay in payment and the workers affected.

Ukraine (ratification: 1961)

The Committee has been commenting on the application in practice of *Article 12(1) of the Convention* (regular payment of wages) on which a number of comments were made by workers' organizations in various sectors. It notes that the Government's report states that the total amount of wage arrears in May 1998 was 5.6 billion grivnas, including the arrears in the state budget sector of 836 million grivnas, and continues to grow.

However, the Government adds that the wage arrears have been reduced since the beginning of the year in certain branches of the economy: by 57 per cent in communication; 40 per cent in the bodies of state and economic authority and the governing bodies of cooperatives and public organizations; 21.4 per cent in shipping industry; 9.4 per cent in the finance, credit and insurance sector; 8.3 per cent in the commercial economic means of transport, as well as in some industries: by 16.7 per cent in thermal power stations; 14.8 per cent in wood processing and pulp industry, and so on.

According to the Government, it is continuing to take measures to ensure the payment of wage arrears: a government commission was set up to deal with the matter; the Finance Minister reports every week to Parliament on the work done with a view to eliminate the wage arrears; two Decisions were adopted by the Cabinet of Ministers (No. 76 of 24 January 1998 and No. 525 of 21 April 1998) which contain measures designed to find out additional sources so as to pay the wage arrears.

As to the inspection, the Government states that in 1997 and the first three months of 1998, 12,600 inspections were made regarding the payment of wages at 12,300 enterprises, during which more than 15,000 violations were identified, 19,100 proposals made and 9,100 instructions were prepared to eliminate the discovered violation. The total amount of wages paid through the measures including the request of the labour inspection amount to 100 million grivnas. During the same period, 1,093 persons were subject to disciplinary liability for violation of labour legislation. The officials guilty of serious violations of legislation concerning wages are subject to administrative liability. Based on the 1,031 reports on violations submitted by the labour inspectors, the courts of law adopted 535 decisions on administrative measures and on penalties amounting to 32,000 grivnas.

The Committee takes due note of all the information. However, it is difficult to appreciate the actual size of outstanding debts due to wage-earners since the Government has supplied information on the decrease of wage arrears in some sectors in percentages than in absolute figures, without indicating whether decreases have been observed in the majority of sectors. Neither is it clear if there are some sectors in which wage arrears are still increasing.

The Committee recalls that the present problem concerns the implementation in practice of the national labour legislation giving effect to the Convention, which requires a continued effort and a wide range of measures for effective supervision, strict application of penalties, and the settlement of existing wage arrears. It requests the Government to continue to provide information on all relevant measures taken to ensure the regular payment of wages and a rapid settlement of wage arrears as well as data showing their results. The Committee also asks the Government to provide a copy of the Cabinet decisions mentioned above and to refer in particular to any progress made regarding the draft law on penalties on the inappropriate use of funds, and the procedures for compensation of workers' loss from the untimely payments, which the Committee noted in the previous observation.

Uruguay (ratification: 1954)

The Committee notes the observations made by the Latin American Central of Workers (CLAT), with reference to *Articles 6 and 9 of the Convention*, pointing out that there have been cases of non-payment of wages for overtime hours worked and inappropriate deductions from wages. These observations were transmitted to the Government for its comments in January 1998. In the absence of response from the Government, the Committee invites it to send its observation on the issues raised.

[The Government is asked to report in detail in 1999.]

Zambia (ratification: 1979)

The Committee notes that the observations have been received from the Zambia Congress of Trade Unions (ZCTU), pointing out that wages have not been paid in most local authorities for periods ranging from two to 19 months, affecting close to 10,000 workers and 100,000 people, including their families. These observations were transmitted to the Government for its comments in September 1998. In the absence of response from the Government, the Committee invites it to send its observation on the issue raised with reference to the provision of *Article 12(1) of the Convention* regarding the regular payment of wages.

[The Government is asked to report in detail in 1999.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Comoros, Djibouti, Dominican Republic, Libyan Arab Jamahiriya, Nicaragua, Russian Federation, Saint Lucia, Sierra Leone, Solomon Islands*.

Convention No. 96: Fee-Charging Employment Agencies (Revised), 1949

Sri Lanka (ratification: 1958)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Part III of the Convention.* The Committee notes the Government's reply to the observations made in March 1990 by the Lanka Jathika Estate Workers' Union, as well as the new observations made by this organization and by the Employers' Federation of Ceylon, transmitted by the Government with its last report.
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> The Government refers to the Sri Lanka Bureau of Foreign Employment Act, No. 21 of 1985, which contains provisions to control the activities of foreign employment agencies, in conformity with *Article 10* of the Convention. It points out that this Act has been enacted to strengthen the enforcement machinery dealing with the regulations of foreign employment agencies. It recognizes, however, that the exploitation of workers exists to a certain degree, though every effort is being taken to eradicate the existent malpractices. It indicates, in particular, that such agencies are inspected on a regular basis by the officials of the Bureau and deterrent action is taken for violation of the law, and gives statistics regarding inspections carried out and cases filed.
>
> The Lanka Jathika Estate Workers' Union, in its new observations transmitted with the Government's report, concedes the fact that the attention of the Government has been concentrated on this issue and that specific steps appear to have been taken in order to control the activities of foreign employment agencies. However, according to this organization, the problem of proper and adequate supervision of activities of these agencies by the national

labour authority continues to prevail in practice, which is mainly due to the lack of sufficient and adequate staff, and to administrative constraint. The Union requests the Government to adopt and implement a comprehensive work programme to meet this challenge.

As to the Employers' Federation of Ceylon, it considers that the comments of the workers' union movement warrant serious consideration as such illegal practices do exist, while noting also that in the recent past the Government has taken measures to strengthen its enforcement capabilities.

The Committee would be grateful if the Government would continue to supply information on the effect given in practice to Act No. 21 of 1985. It asks the Government to provide, in its next report, relevant extracts of the annual activity reports that the Bureau of Foreign Employment is required to submit under section 19 of the Act, as well as the other information on practical application of the Convention requested under *point V of the report form*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Bangladesh, Djibouti, Ethiopia, France, Malta, Panama, Swaziland.*

Convention No. 97: Migration for Employment (Revised), 1949

Malaysia

Sabah (ratification: 1964)

The Committee notes the Government's report and the discussion which took place at the 1998 Conference Committee on the application of *Article 6 of the Convention* (payment of compensation in respect of employment injury and invalidity).

Article 6, paragraph 1(b). In its previous comments, the Committee drew to the attention of the Government the fact that the transfer of foreign workers working in the private sector from the Employees' Social Security Scheme (ESS) to the Workmen's Compensation Scheme was not in conformity with this provision of the Convention. A review of the two schemes had in fact shown that the level of benefits in case of industrial accident, provided under the ESS, is substantially higher than that provided under the Workmen's Compensation Scheme. In this respect, the Committee notes with interest that the Government has reported that it is now contemplating a review of the present situation regarding the coverage of foreign workers under the ESS and that it is proposing amendments to the Social Security Act of 1969 in this regard. The Committee hopes that in its next report the Government will be able to indicate the progress made in amending the Social Security Act in order to ensure that foreign workers will receive an equal benefit, including workmen's compensation benefits, to that paid to nationals, in conformity with this provision of the Convention. Please supply copies of the proposals made or the amended law, if adopted, in its next report.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Dominica, Saint Lucia.*

Convention No. 98: Right to Organise and Collective Bargaining, 1949

Albania (ratification: 1957)

The Committee notes with regret that the Government's report does not answer the matters raised in previous comments. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous comments, which read as follows:

> *Articles 4 and 6 of the Convention.* The Committee had noted that, according to the Government, public servants have the right to organize but not to negotiate their salaries which are fixed by decree. The Committee emphasizes that Article 6 of the Convention does not deal with the position of public servants engaged in the administration of the State, nor can it be construed as prejudicing their rights or status in any way. Indeed, the idea of public servants must be envisaged restrictively since large categories of workers who are employed by the State should not be excluded from the terms of the Convention merely on the grounds that they are formally placed on the same footing as public officials. The distinction must therefore be drawn between, on the one hand, public servants who are directly employed in the administration of the State and other persons employed by the Government in public enterprises who should benefit from the guarantees provided for in the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 200). The Committee therefore requests the Government to send information on the rights of public servants who are not engaged in the administration of the State to negotiate collectively their working conditions, and to specify the applicable texts.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Australia (ratification: 1973)

The Committee takes note of the oral and written information supplied by the Government to the Conference Committee in June 1998 and the detailed discussion which took place thereafter. The Committee also notes the Government's response to comments made by the Australian Council of Trade Unions (ACTU) regarding various aspects of the Workplace Relations Act, 1996. The Committee further observes that on 13 August and 2 October 1998, the ACTU submitted further detailed comments on, inter alia, the Workplace Relations Act, 1996, as well as other Australian laws. The Committee therefore requests the Government to reply to the most recent comments furnished by the ACTU as well as to the previous comments made by the Australian Chamber of Commerce and Industry (ACCI) in order to review the various issues raised therein in full knowledge of all the facts.

Bolivia (ratification: 1973)

Please see the comments made under Convention No. 87.

Brazil (ratification: 1952)

The Committee observes that, with regard to the various questions raised in its previous observation, the Government has provided a report, although this was not requested for the present meeting. The Committee proposes to examine the report at its next meeting during the regular reporting cycle on the application of the Convention. The Committee notes with interest that the Government is ready to receive an ILO technical mission in April 1999.

With regard to the comments made by the *Sindicato dos Arrumadores de São Sebastião* and the *Sindicato dos Estivadores de São Sebastião* in June 1997, the Committee notes the discussions on the application of the Convention by Brazil that took place in the Conference Committee in June 1998, and the Government's reply to the unions' comments. The trade unions in question state that: (i) the Government, citing the deregulation of port activities, promulgated Federal Act No. 8630/93 concerning regulations governing the operation of organized ports and port facilities, which repeals section VII of the Consolidation of Labour Laws and other relevant decrees and therefore constitutes a retrograde step; and (ii) the Government is not taking any measures in response to the reluctance of employers in the sector to conclude some form of collective labour agreement, although according to Federal Act No. 8630/93 an instrument of this type is necessary.

The Committee notes that the Government states in reply to these comments that: (i) modernization of the port system is necessary, which is why Act No. 8630/93 of 25 February 1993 (known as the Ports Act) was enacted: the Act provides for changes in the regulations governing the operation of ports and ends the labour monopoly enjoyed by the unions in the port sector; (ii) since legislative changes have meant that workers in the sector must come to terms with a new situation, an executive group for the modernization of the ports was set up to develop, implement and monitor a comprehensive modernization programme, one element of which is a government plan of action for the port sector whose objectives include that of strengthening the process of collective bargaining; (iii) the executive group for the modernization of the ports noted in its assessment of the labour situation in the ports that the process of collective bargaining requires a strengthening of the mediation and supervisory role of the public authorities, since flagrant abuses by both parties are to be found at some ports; (iv) in order to achieve the plan's objectives, a tripartite working group is to be set up to propose specific solutions; and (v) the Ministry of Labour will plan a number of initiatives to provide protection for workers in the port sector, and undertakes among other things to draw up a draft standard-setting instrument on labour relations in the port sector.

The Committee notes the Government's information. The Committee recalls that Convention No. 98 "should not in any way be interpreted as authorizing or prohibiting trade union security clauses and that such questions are matters for regulation in accordance with national law and practice" (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 205). The Committee observes furthermore that under the terms of Act No. 8630/93, a collective contract, accord or agreement takes precedence over decisions of the authority which is responsible among other things for the administration of labour supply in the port sector (section 18 of the Act). The Committee notes in this regard that according to the trade union organizations, employers in the sector refuse to enter into any collective labour agreement and that the Government acknowledges the existence of abuses by both parties in the port sector in the area of collective bargaining. Under these circumstances, noting also that the Government has taken note of deficiencies in the collective bargaining system in the port sector, the Committee requests the Government to take measures in accordance with *Article 4 of the Convention* to encourage and promote the full development and utilization of machinery for voluntary negotiations between employers or employers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements in the port sector, and hopes that this matter will be settled satisfactorily in the near future. The Committee also calls on the parties to act accordingly.

Cameroon (ratification: 1962)

The Committee notes the information provided by the Government in its report.

The Committee recalls that, since the adoption of the Labour Code in 1992, the Committee has requested the Government to amend or repeal sections 6(2) and 166 of the Labour Code which provides for the imposition of a fine ranging from 50,000 to 500,000 francs on the members of the administration or the management of a non-registered trade union which acts as if the union were registered. In this respect, the Committee notes the Government's statement to the effect that an amendment of the Labour Code is envisaged to this effect. The Committee expresses the firm hope that the Government will take the necessary measures to repeal the provisions to ensure that the founders and leaders of trade unions being established enjoy adequate protection against acts designed to prejudice them by reason of their participation in trade union activities, which is contrary to the provisions of *Article 1 of the Convention*. The Committee again requests the Government to provide the text of any measures taken in this respect in its next report.

Chad (ratification: 1961)

The Committee notes the Government's information as well as the comments made by the Confederation of Unions of Chad (CST) in communications dated 21 and 22 August 1997 and in respect of the new Labour Code adopted on 11 December 1996 (Act No. 38/PR/96).

The CST argues that sections 308 and 309 of the new Labour Code, which provide that representative trade union organizations can conclude collective agreements and are represented, at the national level, on the High-level Committee for Labour and Social Security, are contrary to the provisions of the Convention since they authorize the authorities to give privileges to certain organizations to the detriment of others. In this respect, the Government specifies that representativeness, whose parameters are set out by section 310, is essential for a trade union organization and must be verified by the public authority based on legal criteria. The Committee notes this information and that, in respect of section 314, the representative nature of a trade union is determined by taking into consideration the number of due-paying members and the percentage that it obtained at the last elections of workers' representatives, where it must have obtained at least 15 per cent of the workers' representatives elected. The Committee considers that, in these circumstances, the representativeness of trade unions for the purposes of collective bargaining, appears to be legally determined by objective criteria and therefore requires no comment.

Moreover, the CST maintains that sections 346 and 347 of the new Labour Code, which empower the Minister of Labour and Social Security to formulate comments on sectorial or interoccupational collective agreements as well as sections 353, 354 and 356 which provide for the intervention of the Minister in extending or broadening the application of these provisions would be contrary to the provisions of the Convention. The Government, however, points out that sections 346 and 347, which were the subject of the Committee's previous comments, only authorize the Minister to formulate comments and that, in the last resort, it is the parties who freely decide the course they wish to follow. The Committee notes this information and, consequently, considers that sections 346 and 347 do not give rise to new comments. In regard to the possible extension of collective agreements by ministerial decision (sections 353 and 354), the Committee notes that, whilst this extension can take place on the initiative of the Minister, section 353 provides for this decision to be taken following consultation of a tripartite body. The Committee, therefore, will not pursue this point further.

Colombia (ratification: 1976)

The Committee regrets that the Government in its report indicates only that there have been no changes and refers to its previous report, without providing the information requested. The Committee must therefore repeat its previous observation which read as follows:

> The Committee recalls that for many years it has been emphasizing the need for public employees who are not engaged in the administration of the State to benefit from the right to collective bargaining, and that in its previous observation it noted that a Bill guaranteeing this right for public employees had been submitted to the Congress of the Republic.
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> In this respect, the Committee regrets to note that the Government states that the Congress of the Republic decided to shelve the Bill in question. Similarly, the Committee notes that the Government states that the Ministry of Labour is studying the various alternatives for granting such a right to public employees. The Committee expresses the hope that the Government will, as soon as possible, take measures to bring the legislation into conformity with the Convention. The Committee requests the Government to provide information in its next report on all measures adopted in this respect.
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> Furthermore, the Committee recalls that in previous direct requests it referred to: (1) the need for industrial or branch unions to comprise more than 50 per cent of the workers in an enterprise in order to be able to bargain collectively (section 376 of the Labour Code, paragraph supplemented by section 51 of Act No. 50); and (2) the right for federations and confederations to bargain collectively.
>
> In this respect, while the Committee observes that the Government has not forwarded its observations on the questions raised, the Committee requests the Government to take measures to amend the legislation so as to guarantee industrial or branch unions which do not comprise more than 50 per cent of the workers concerned the possibility to bargain collectively, at least in representing their members. The Committee requests the Government to inform it in its next report of any measures adopted in this respect.
>
> Finally, the Committee requests the Government to inform it whether federations and confederations may bargain collectively and, if so, to indicate on what legal basis such a right is founded.

Furthermore, the Committee is addressing a direct request to the Government.

Costa Rica (ratification: 1960)

The Committee notes the Government's report and the information provided in 1997 concerning the comments made by the Inter-Confederal Committee of Costa Rica (CICC) on the application of the Convention.

The Committee recalls that its previous comments referred to the non-recognition of the right to collective bargaining for public servants not engaged in the administration of the State and the need for the adoption of measures to facilitate the rapid expedition of proceedings in cases of anti-union discrimination.

Similarly, the Committee notes the comments made by the CICC in 1997 which referred to the following: (1) the delay in processing of cases of anti-union discrimination and the failure to carry out the courts' rulings to enforce the reinstatement of trade union leaders; (2) acts of interference by the employer in the establishment of trade union organizations; (3) the inequality of treatment between trade unions and solidarist associations with regard to the management of compensation funds for dismissed workers (this matter is examined by the Committee in the framework of Convention No. 87); (4) the lack of adequate bodies to ensure the respect of the right to freedom of association; (5) the impossibility for public servants to negotiate collectively and the non-application of certain collective agreements and the non-existence of collective bargaining in the private sector resulting from the high level of trade union persecution.

Article 2 of the Convention. In respect of the alleged acts of interference, the CICC refers to the case of FERTICA S.A., where the enterprise's management promoted the establishment of an executive committee in parallel with the existing executive trade union committee. The Committee notes the Government's indication that, after having been referred to the administrative authorities, this case was referred to the judicial authorities; nevertheless, the Committee notes that, according to the documentation submitted by the CICC, the Labour Inspectorate concluded in a report that FERTICA S.A. had engaged in unfair practices by "promoting the establishment of another executive committee (... from the union ...) parallel to the existing one ...". Under these conditions, the Committee emphasizes that, in accordance with *Article 2* of the Convention, workers' and employers' organizations shall enjoy adequate protection against any act of interference by each other, as well as the importance of respecting this principle in practice.

Article 3. In respect of the proceedings relating to acts of anti-union discrimination and the failure to implement the courts' rulings to reinstate trade union leaders, the Committee notes the Government's statement that: (i) in respect of administrative procedures, the National Directorate of Labour Inspection has undertaken to investigate the numerous denunciations made on these matters in an objective manner and as laid down in the basic principles set out in the Constitution, in national law and jurisprudence; these investigations result in administrative decisions, which on occasion result in cases being brought to the courts; the Government provides detailed information on the various stages of the proceedings in respect of the following enterprises: *FERTICA S.A.*, *Caja de Ande*, *Compañía Bananera Anabel* and the *Institute of Agrarian Development*; (ii) when these matters are referred to the judicial authorities, the National Directorate of Labour Inspection is prevented from intervening in the proceedings, either to speed up the proceedings or to support the plaintiffs, but that the lawyers of the National Directorate of Labour Inspection undertake awareness-raising activities for those responsible for the case; (iii) the lack of enforcement of sentences handed down by the courts and the time taken to resolve each case in the first and second instances cannot be blamed on the administrative authorities; (iv) whilst it is clear that existing labour legislation is inadequate to resolve the numerous labour issues, it is also clear that the delay in certain proceedings have occurred as a result of the inaction or tardiness of certain plaintiffs in providing evidence or in fulfilling certain requirements which are necessary to prove the alleged offences; (v) a Ministry of Labour directive recently reaffirmed the obligation of the administrative authorities to speed up proceedings in respect of anti-union discrimination and a ruling of the Constitutional Council of the Supreme Court indicates that the work of the administrative authorities is limited to carrying out an investigation to determine whether there are sufficient grounds to bring a case before the courts and emphasizes that the investigation must be concluded within a two-month period.

The Committee also notes that the CICC refers to a considerable number of denunciations of acts of anti-union discrimination between 1994 and 1996 which have still not been processed by the administrative authorities and that the Government has commented on several cases of delays. Similarly, the Committee notes that the Government does not deny the slowness of judicial procedures in labour matters and emphasizes that this is largely due to the lack of evidence supplied by the parties and that the Constitutional Council of the Supreme Court recently laid down a two-month time-limit on the administrative authorities for the proceedings (prior to the cases of anti-union discrimination being referred to the courts). The Committee recalls that, in cases of allegations of acts of anti-union discrimination, it has always emphasized the necessity of providing expeditious, accessible, inexpensive and impartial means of preventing acts of anti-union discrimination or remedying them as quickly as possible (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 216). Under these conditions, since the Government recognizes the inadequacy of the procedures laid down in the current labour legislation and that up to now significant measures have only been adopted in respect of administrative procedures (a directive of the Ministry of Labour reaffirming the duty of the administrative authorities to expedite the proceedings of cases of anti-union discrimination, and a ruling of the Constitutional Court imposing a two-month time-limit on the administrative authorities for their investigations and to decide whether to bring a case for acts of anti-union discrimination), the Committee requests the Government to consider amending the legislation to expedite judicial proceedings concerning anti-union discrimination and to ensure that the decisions thereby are implemented by effective means. The Committee requests the Government to inform it in its next report of any measures adopted in this respect.

Article 4. In regard to its previous comments on the non-recognition of the right to collective bargaining of public servants not engaged in the administration of the State, which was also raised by the CICC, the Government had been referring for several years to a Bill respecting public employment which considers the right to collective bargaining and to strike in the public sector. The Committee notes that, in its report, the Government states that the Bill in question is still awaiting examination by the Legislative Assembly and that, within the legal and constitutional limitations restricting the intervention of the Executive in the functions of other branches of the Republic, the Ministry of Labour and Social Security undertakes to make greater efforts to encourage the examination of the Bill in the near future. The Government also refers to the Regulation of 1992 on collective bargaining by public servants which, in a certain manner, is transitory in its nature and provides for the "participation" of public servants in determining their terms and conditions of work, although the Government recognizes that this participation does not take place through collective agreements. The Government also indicates that it envisages presenting a draft text to the Legislative Assembly respecting the settlement of collective disputes in the public sector which, in its opinion, would fully and totally resolve the problem of collective bargaining. In this respect, the Committee regrets to note that, despite this being a fundamental right, there have been no significant developments for many years with regard to the right of public servants who are not engaged in the administration of the State to bargain collectively to determine their terms and conditions of work through collective contracts or agreements. Under these conditions, the Committee expresses the firm hope that the legislation on this matter will be adopted in the near future and requests the Government to keep it informed in this respect.

With regard to the comments made by the CICC in respect of the non-application of collective agreements concluded by the parties (and in particular with reference to the case of FERTICA S.A.), the Committee notes that, although the Government has not transmitted its comments in this respect, the Committee on Freedom of Association has examined this allegation and has adopted recommendations requesting the Government to take measures to ensure that FERTICA S.A. duly complies with the collective agreement (see the 305th Report of the Committee on Freedom of Association, Case No. 1879, paragraph 205(a)).

Finally, in respect of the CICC's allegation that collective bargaining in the private sector is non-existent as a result of the high levels of trade union persecution, the

Committee notes that the CICC has not provided concrete information in support of its allegations and the Committee is therefore unable to reach conclusions on this matter.

Côte d'Ivoire (ratification: 1961)

The Committee notes the Government's report does not contain information in respect of its previous comments. The Committee noted that Act No. 95-15 of 12 January 1995 issuing the Labour Code affords sufficient protection against acts of anti-union discrimination against trade union delegates and workers' representatives (section 100.5). In respect of protection afforded to workers in general against acts of anti-union discrimination, the Committee notes that section 4 of the Labour Code prohibits employers from taking into consideration "membership or non-membership of a trade union or trade union activities of workers for making decisions regarding, in particular, recruitment, conduct and distribution of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of the employment contract". The Committee understands that violations of the provisions of this section of the Labour Code are punishable by the sanctions applicable under the conditions determined by decree (section 100.4 of the Labour Code). The Committee, therefore, requests the Government to specify whether such a decree exists and to provide the Committee with a copy; should this decree not exist, the Committee requests the Government to take the necessary measures to ensure that the prohibition on acts of anti-union discrimination against workers is accompanied by sanctions which are sufficiently effective and dissuasive. The Committee requests the Government in its next report to indicate the measures taken in this respect.

Croatia (ratification: 1991)

The Committee notes the comments made by the Union of Autonomous Trade Unions of Croatia (UATUC), the Independent Trade Union of the Croatian Electrical Power Industry and other workers' organizations as well as the Government's reply in this respect.

Articles 1, 2 and 3 of the Convention. 1. The UATUC alleges that although the Act respecting labour relations lays down sanctions against employers as legal entities, in practice these sanctions are not being applied since the complaints brought against employers have been rejected on the grounds that employers, as legal entities, are not liable for petty offences. The Government states that legislation respecting petty offences does not recognize the responsibility of legal entities. Nevertheless, the Government points out that supervision of the application of the labour legislation falls within the competence of the labour inspectorate and that employers have been and are continuing to be punished for non-compliance of this legislation under the Labour Inspection Act. Moreover, the Committee notes that the Labour Act establishes protection against acts of anti-union discrimination and acts of interference which are accompanied by penal sanctions and fines ranging from 5,000 to 20,000 kunas (section 228 of the Labour Act). In this respect, the Committee considers that the labour legislation provides sufficient protection against acts of anti-union discrimination and interference.

2. The UATUC states that there have been certain instances where the authorities or employers have favoured a workers' organization to the detriment of other organizations and cites the example of the Labud enterprise, whose management favoured the Croatian Association of Trade Unions (HUS). The UATUC also states that the Zagreb local authorities had made financial contributions to trade union activities, one example of which is the International Labour Day celebrations organized by the URSH trade union

confederation. The Committee notes that UATUC has not provided specific information, without which the Committee is unable to determine whether, in the above instances, the authorities or the employers committed acts of interference and violated *Article 2* of the Convention. Lacking such information, the Committee cannot proceed with its examination of these questions.

Article 4. 1. The UATUC alleges that under section 186 of the Labour Act, an employer may avoid collective bargaining and obstruct the use of collective bargaining machinery by making use of right-wing trade unions. The UATUC states that where a trade union refuses to take a collective trade union position, the Labour Act provides for a ballot to be held. However, since the Act does not lay down the procedure to follow in the event of a ballot or who may participate in the ballot, the ballot can not take place. The Government states that: (i) all trade unions in Croatia agreed to the provisions laid down in section 186 and stipulated the Government's acceptance of this provision as a condition of the enactment of the Labour Act; (ii) section 186 may be applied in practice if interpreted correctly; (iii) if all trade unions represented in the bargaining unit are dissatisfied with the negotiations and do not wish to accept the collective agreement, the employer may conclude the agreement with those trade unions who wish to sign the agreement. The Committee notes that section 186 provides that: (1) a collective bargaining unit may be established if a trade union or a higher-level organization is present in the *territory* in which a collective agreement is to be concluded; (2) this bargaining unit shall be composed of representatives of those trade unions who shall stipulate the number and the composition of the collective bargaining unit; (3) if trade unions are unable to agree on the composition of the collective bargaining unit, the number of representatives of each trade union participating in the bargaining unit shall be established in accordance with the number of votes cast for each trade union; (4) all trade union members who are active in a territory for which a collective agreement is to be negotiated shall participate in the ballot; (5) the rules and the criteria for electing members to the collective bargaining unit shall be established by a consensus of all the trade unions and if no agreement exists when the elections take place, it shall fall upon the Economic and Social Council to do so; (6) the parties concerned may decide that the members of the collective bargaining units shall not be elected by ballot and shall authorize an industrial tribunal to issue a decision in this regard. Following its examination of section 186 of the Labour Act, the Committee considers that this provision is in conformity with the Convention. Moreover, in its previous report the Government had stated that only bargaining units were established within the collective bargaining framework in respect of public servants and employees. Finally, in the event that an employer uses right-wing trade unions in the collective bargaining process, national legislation lays down adequate sanctions as stated above.

2. The UATUC states that as a consequence of the interpretation given by the Ministry of Labour on 12 February 1996 to all the collective agreements concluded with the Croatian Chamber of Commerce or with its departments these collective agreements were declared null and void as of 1 January 1996, due to the fact that the Chamber of Commerce is an employers' association in which affiliation was compulsory. Consequently, no new agreements have been concluded between the trade union and the relatively small employers' association, which has resulted in a number of trade union organizations petitioning the courts for the recognition of the rights guaranteed in the collective agreements in question. The Government states, in this respect, that: (1) the decision issued by the Ministry of Labour refers to collective agreements concluded by the Croatian Chamber of Commerce as employer — which did not contain an expiration clause; (2) the Chamber of Commerce was established by law and membership was

obligatory; (3) only employers' associations who adhere to the principle of freedom of association and who comply with international standards and labour legislation may conclude an agreement; and (4) several collective agreements have been concluded with the Chamber of Commerce and negotiations are under way with a view to concluding new collective agreements. Under these circumstances and taking into account the principle of freedom of association which applies to both workers' and employers' organizations and the new agreements which have been concluded by the Government in distinct areas of activities, giving rise to negotiations to conclude other agreements, the Committee shall not proceed with its examination of these questions.

Moreover, the Committee notes that the Independent Trade Union of the Electrical Industry of Croatia and other workers' organizations have submitted comments with regard to the application of the Convention in respect of the restrictions on the possibility of bargaining collectively to obtain wage increases in state enterprises and corporations, by virtue of the adoption, on 30 December 1997, of the decision respecting compulsory instructions for the implementation of a remuneration policy, published in the *Official Gazette* No. 142/97. The Committee requests the Government to comment in this respect.

Finally, the Committee proposes to examine the remaining questions raised in its observation of 1997 during its next meeting within the framework of the regular reporting cycle.

Democratic Republic of the Congo (ratification: 1969)

The Committee regrets to note that the Government's report has not been received. Nevertheless, it notes the conclusions of the Committee on Freedom of Association with regard to Cases Nos. 1818 and 1833 and Cases Nos. 1905 and 1910, made in November 1995 and June 1997, respectively, which refer to acts of interference by employers in the private sector and by the public authorities and the violation of the right to collective bargaining. Under these conditions, the Committee is bound to recall its previous comments in respect of the following points.

Article 1 of the Convention. The Committee notes that section 228 of the Labour Code (Legislative Order No. 67/310 of 9 August 1967) prohibits the dismissal of or discrimination against workers by reason of trade union membership or participation in trade union activities and that section 49 of the Labour Code only provides for the payment of compensation in the event that a contract of employment is terminated without due cause. The Committee requests the Government to indicate the protection granted to workers whose contracts are terminated for reasons of trade union membership or activity.

Article 2. The Committee notes that section 229 of the Labour Code obliges employers' and workers' organizations to refrain from acts of interference by each other in their establishment, functioning and administration. In this respect, the Committee again requests the Government to provide information on the protection provided against acts of interference by an *individual employer*.

Article 4. The Committee takes due note of the examination by the Committee on Freedom of Association of the above cases with regard to the refusal by the public authorities to undertake negotiations with the staff of a public service and the refusal to allow certain representative organizations to participate in a joint commission in the public service and requests the Government to specify the measures adopted to encourage and promote the development and utilization of machinery for negotiations between the public authorities and workers' organizations, including workers' organizations in public sector enterprises, to regulate the terms and conditions of employment.

The Committee hopes that the Government will make every effort to adopt the necessary measures in the near future.

Ecuador (ratification: 1959)

The Committee notes the Government's report.

1. The Committee recalls that in its previous observation it had noted that two Bills were drafted in September 1997 during the course of a technical assistance mission requested by the Government. These draft Bills provide for:

— the repeal of section 1 of Decree No. 2260 which imposes the requirement of the prior advice of the National Secretariat of Administrative Development (SENDA) on draft collective agreements in the public sector (a provision which in itself is not contrary to the Convention but the repeal of which was the subject of consensus by the social partners and the authorities interviewed by the mission); in its report, the Government indicates that SENDA no longer exists and that provisions are due to be taken concerning who will assume the responsibility for the functions discharged by this Institute or alternatively the provision noted by the Committee will no longer remain in force in the absence of a body to implement the standard; and

— the addition to section 3, paragraph (g), of the Civil Service and Administrative Careers Act whereby workers in official departments or other public sector institutions as well as private sector institutions in the social or public spheres are covered by the Labour Code, thereby enabling these workers to enjoy the right to organize and the right to bargain collectively.

The Committee observes that the Government, referring to the technical assistance mission, indicates in its report that: (1) at no time has it rejected the possibility of proposing reforms to the legislation and if the Ministry of Labour found it necessary, it would have recourse once again to the technical assistance of the Office to update Ecuadorean labour legislation; (2) the Ministry of Labour is very well disposed to make best use of the positive aspects of the technical assistance mission which visited Ecuador in 1997; and (3) it requests the Committee to indicate what could be retained from the agreements reached during the 1997 mission in the light of the new political Constitution so that it can follow them up as appropriate.

In this regard, the Committee requests the Government to take the necessary measures to amend section 3, paragraph (g), of the Act pertaining to the Civil Service and Administrative Careers so that workers in official departments or other public sector institutions as well as private sector institutions in the social or public spheres enjoy the rights enshrined in the Convention.

2. The Committee recalls that in its previous observations it had requested the Government to take measures: (i) to include in its legislation provisions which guarantee protection against acts of anti-union discrimination at the time of recruitment; and (ii) to amend paragraph 2 of section 229 of the Labour Code relating to the submission of a draft collective agreement which provides in its second paragraph that "in public sector institutions, entities and enterprises or those in the private sector in the social or public sphere, in which no works committees exist, the workers subject to the Labour Code shall set up a sole central committee, be it on the national, regional, provincial or branch level, as appropriate, established by more than 50 per cent of the said workers" so that when minority trade unions do not meet this percentage, they may, on their own or jointly, negotiate at least on behalf of their own members. The Committee regrets to note that the Government's report does not mention these matters and once again requests it to take the

necessary measures to amend these provisions in line with the requirements of the Convention.

3. Moreover, the Committee had noted in its previous observation that teaching staff and heads of educational institutions as well as those who carry out technical and professional functions in the education sector are subject to the laws pertaining to education and the salary scales of teachers referred to in section 3(h) of the Civil Service and Administrative Careers Act, and therefore do not enjoy the right to organize and to bargain collectively.

In this respect, the Committee notes that the Government indicates that although teaching staff and heads of educational institutions and others do not enjoy the right to organize or bargain collectively, they do have the right of association, through which they raise issues concerning their collective rights and defend those rights under the auspices of the National Union of Educational Personnel. Within the context of the special rules applying to them, these educational personnel use all valid means to further the aspirations and rights of their members, in a similar manner as do workers who enjoy the right to organize and bargain collectively.

In these conditions, the Committee would recall that the Convention guarantees the right to collective bargaining of teachers at all levels and requests the Government to take measures with a view to amending legislation so that teachers have the right to bargain collectively not only at the national level but also at the local and workplace levels.

4. The Committee expresses the firm hope that the Government will provide detailed information in its next report on any progress made with regard to the issues raised.

Ethiopia (ratification: 1963)

The Committee notes with regret that the Government's report contains no new elements in relation to its previous reports. It must therefore repeat its previous observation which read as follows:

> *Articles 4 and 6 of the Convention.* The Committee notes that the Constitution of 8 December 1994 grants civil servants the right to organize and to conclude agreements with their employers (section 42). The Committee observes that the Government indicates in its report that specific legislation is being prepared to this end and will be sent to the ILO as soon as it is promulgated.
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> The Committee requests the Government to indicate in its next report any progress made towards adoption of legislation ensuring the recognition, both in law and in practice, of the right to voluntary negotiation of employment conditions for public servants, with the sole possible exception of those engaged in the administration of the State.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Gabon (ratification: 1961)

The Committee notes the communication by the Confederation of Gabonese Free Trade Unions (CGSL), dated 20 May 1998, concerning the application of the Convention. The Committee requests the Government to provide its comments in this respect in its next report.

Ghana (ratification: 1959)

The Committee notes with regret that the Government's report has not been received. Recalling that its previous comments concerned the 1985 Provisional National Defence Council (PNDC) Law 125, section 2 of which prohibits the application of the collective agreement to the Ghana Cocoa Board in cases where the Board decides to declare workers redundant for economic reasons, and section 3 of which cancels the provisions of collective agreements with respect to redundancy awards in the case of redundancies declared for economic reasons, the Committee asks the Government to indicate whether the law in question, has in fact now been repealed and, if not, to take the necessary measures to see that this is done. The Committee asks the Government to keep it informed in this respect.

The Committee hopes that the Government will do all in its power to take the necessary measures in the very near future.

Greece (ratification: 1962)

The Committee takes note of the communication of the Greek General Confederation of Labour dated 3 February 1998 in which it states that 18 months after the entry into force in 1996 of Law No. 2414 on the "Modernization of Public Enterprises and Corporations" which provides for collective bargaining in public service enterprises, the Government introduced a provision in a draft law on tax regulations (article 31(8) of Act No. 2579/98) according to which the modification of the Personnel General Rules of public enterprises and corporations "which present negative economic results or have entered the phase of rationalization" should be made within six months from the date the said Act was published in the *Official Gazette*; however, if no agreement was reached after the expiration of the negotiation period, the modification would be made by law. The General Greek Confederation of Labour denounces this legislative intervention in the collective bargaining. In its communication dated 9 October 1998, the Government specifies that the legislative regulation was made within the framework of rationalization of certain public enterprises which met serious economic and financial difficulties, including urban transport of Athens railways and postal services but did not cover the large majority of the public utility undertakings and other enterprises of the wider public service. The Government insists that these measures were transitional and since they were completed the modifications to the Personnel General Rules of public enterprises and corporations were now by means of labour collective agreements concluded between the administration and the most representative organizations of the workers concerned. The Committee takes due note of this information.

Guinea (ratification: 1959)

The Committee notes that the Government's report has not been received and is therefore bound to reiterate its previous comments which read as follows:

> *Articles 1 and 2 of the Convention.* The Committee observes that section 249 of the Labour Code prohibits any clause in a collective agreement which directly or indirectly restricts the freedom of workers to join the union of their choice; not to join a union, or to withdraw from a union and which provides for a fine in the event of non-compliance, and that sections 277 to 282 provide protection for trade union representatives. The Committee would remind the Government that legislation should contain specific provisions to protect workers against anti-union discrimination at the time of recruitment and during employment to protect workers and their organizations against acts of interference by employers and that these

provisions should be accompanied by effective and expeditious procedures and sufficiently dissuasive sanctions.

The Committee hopes that the Government will make every effort to adopt the necessary measures in the near future.

Haiti (ratification: 1957)

The Committee notes the Government's report and recalls that in its previous observations it had requested the Government to keep it informed of all developments concerning: (i) the adoption of a specific provision providing for protection against anti-union discrimination at the time of recruitment; (ii) the adoption of provisions guaranteeing, in a general manner, workers adequate protection against acts of anti-union discrimination coupled with effective and expeditious procedures and sufficiently dissuasive sanctions; and (iii) the amendment of section 34 of the Decree of 4 November 1983, which confers on the Social Organizations Service of the Department of Labour and Social Welfare the power to intervene in the drawing up of collective agreements.

In its previous report, the Government had indicated that section 34 of the Decree of 4 November 1983 was in the process of being amended and that the adoption of specific provisions which provide protection against anti-union discrimination were being examined. The Committee regrets that the Government is unable to provide specific information on these points in its present report and is now bound to reiterate its previous comments. The Committee expresses the firm hope that the Government will take the necessary measures to bring its law in to full conformity with the provisions of the Convention and requests the Government to keep it informed of any developments in this respect.

Honduras (ratification: 1956)

The Committee notes the Government's report.

The Committee recalls its previous comments which referred to the need for the legislation to provide sufficiently effective and dissuasive sanctions against anti-union discrimination and acts of interference by employers or their organizations in trade union affairs. In this respect, the Committee had noted that a draft text to amend the Labour Code of December 1996 strengthened the measures and sanctions to protect workers against acts of anti-union discrimination and/or interference, with fines ranging from 30 to 100 times the highest statutory minimum monthly wage (section 390 of the draft text).

The Committee notes that the Government refers to the draft text of the above Labour Code and indicates that the reform measures have not been completed by the social partners.

In these conditions, the Committee hopes that in the very near future the necessary legislative amendments will be adopted. The Committee requests the Government to inform it in its next report of any measures adopted in this respect.

Iceland (ratification: 1952)

The Committee notes the Government's report.

1. The Committee refers to its previous comments on the need for the Government to refrain from intervening in agreements that have been freely concluded by the social partners since this impairs the rights of workers and employers to freely negotiate terms and conditions of employment.

The Committee notes with interest the information in the Government's report that the Working Party, appointed in October 1994 by the Minister of Social Affairs to examine the rules governing industrial relations in the labour market as well as in Iceland's neighbouring countries, submitted a partial report in November 1995 after having met on 48 occasions. The main proposals of the Working Party were, inter alia, to place more responsibility on the main organizations of employers and workers concerning the planning and running of the negotiations on collective agreements; to minimize time spent on negotiation; to strive for the conclusion of main collective agreements at the same time; to strengthen the role of conciliation and mediation officers; and to clarify the requisite for submission of compromise proposals. A bill based on the Working Party's report and providing for changes to the Act respecting Trade Unions and Industrial Relations, No. 80/1938 was introduced to Parliament in March 1996 and passed by the Parliament (Althingi) in June 1996 (Act No. 75/1996). The amendments brought by the Act cover, inter alia, the mandate of the negotiating committee who acts on behalf of a contracting party when a wages and terms agreement is made, the validity of wages and terms agreements, workplace agreements, the schedule for the conduct of negotiations on the renewal of wages and terms agreements, the earlier involvement of the conciliation and mediation officer and the conditions for the conciliation and mediation officer to submit compromise proposals. The Committee observes that the new legislation does not provide for compulsory arbitration requested by one party or initiated by the authority.

2. The Committee further notes that wages and terms agreements in the private sector expired on 1 January 1997; agreements were reached in March and April 1997 after four full months of negotiation between the employers or their organizations and the main employees' organizations; these agreements cover the period until February and the end of the year 2000. As regards merchant seamen and fishermen, the Government specifies that progress was made in negotiations and agreements reached in March and April 1997 with a large grouping of workers in Iceland; most of these agreements run until February to November 2000. However, one group, the Association of Icelandic Marine Engineers (VSFI) referred its wage dispute to the State Conciliation and Mediation Officer in the summer of 1997. Also, wages and terms agreements were concluded with the Union of Icelandic Graphical Workers and the Union of Icelandic Journalists. Finally, with regard to civil servants, their wages and terms agreements ended on 31 December 1997; and wages agreements were concluded between April and July 1997 to last until 31 October 2000.

The Committee takes note of this information.

Jamaica (ratification: 1962)

The Committee notes the information provided by the Government in its last report and recalls its previous comments in respect of the denial of the right to collective bargaining in a bargaining unit when no single union represents at least 40 per cent of the workers in the unit in question or when, if the former condition is satisfied, the union engaged in the procedure of obtaining recognition for collective bargaining purposes does not obtain 50 per cent of the votes of the total number of workers (whether they are affiliated or not to this union), where a ballot is requested by the trade union (section 5(5) of Act No. 14 of 1975 and section 3(1)(d) of its Regulation).

The Government indicates in its report that it endorses the requirement of 40 per cent since several bargaining agents for the same unit can result in different working conditions for the same category of workers if they are not members of the same union.

Moreover, the withdrawal of this requirement could lead to *sweetheart agreements* being concluded.

The Committee notes the Government's concerns and considers that where there is no collective agreement and where a trade union does not obtain 50 per cent of the votes of the total number of workers required by law, this trade union should be able to negotiate at least on behalf of its own members. Where one or more trade unions are already established as bargaining agents, a ballot should be made possible when another trade union claims that it has more affiliated members in this bargaining unit than those trade unions, and thereby invokes its most representative status in the unit in order to be considered as a bargaining agent. The Committee, therefore, requests the Government to take the necessary measures to amend its legislation to this effect and to keep it informed in this respect.

Japan (ratification: 1953)

The Committee notes the comments made by the Japan National Hospital Workers' Union (JNHWU) on the application of the Convention. In a communication dated 23 November 1998, the Government states that it is drawing up its comments on the matters raised by JNHWU and expresses its intention to submit them to the ILO before the 1999 session of the Committee. The Committee awaits the Government's response thereon, as well as on the issues raised in its previous observation, namely the negotiation rights of public employees and the exclusion of certain matters from negotiation in state enterprises.

Liberia (ratification: 1962)

The Committee notes with regret that for the eighth year in succession the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes that no measures have been taken to eliminate the discrepancies between the national legislation and the Convention. In the circumstances, the Committee can only recall its comments of the last few years which concern the following points:
>
> 1. *Article 1 of the Convention.* The provisions of the national legislation are insufficient to guarantee workers adequate protection, accompanied by sufficiently effective and dissuasive sanctions, at the time of recruitment and during the employment relationship.
>
> 2. *Article 2.* The present provisions are not sufficient to ensure adequate protection of workers' organizations, accompanied by sufficiently effective and dissuasive sanctions, against acts of interference by employers and their organizations.
>
> 3. *Articles 4 and 6.* The possibility of collective bargaining is not offered to employees of state enterprises and other authorities since these categories are excluded from the scope of the Labour Code, whereas under *Article 6* of the Convention, only public servants engaged in the administration of the State are not covered by the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Libyan Arab Jamahiriya (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1 of the Convention.* The Committee had noted that section 34 of Act No. 107 of 1975 concerning trade unions only provided for protection against acts of anti-union discrimination for trade union activities during the employment relationship, but not at the time of recruitment. In this respect, the Committee recalls that under the terms of *Article 1*

> of the Convention, legislative measures, accompanied by sufficiently dissuasive sanctions, should be adopted which would provide for protection against acts of anti-union discrimination not only during the employment relationship but also at the time of recruitment. In these circumstances the Committee requests the Government to take measures as indicated above.
>
> Moreover, the Committee had noted that public servants not engaged in the administration of the State, agricultural workers and seafarers, did not have adequate protection against acts of anti-union discrimination. In this respect, the Committee recalls that the Convention does not exclude from its scope any of the categories of workers mentioned above. In these circumstances, the Committee requests the Government to take appropriate measures, as soon as possible, accompanied by sufficiently dissuasive sanctions, so that workers in the sectors mentioned above enjoy adequate protection against acts of anti-union discrimination at the time of recruitment as well as during the employment relationship.
>
> *Articles 4 and 6 of the Convention.* The Committee had noted that sections 63, 64, 65 and 67 of the Labour Code required the clauses of collective agreements to be in conformity with the national economic interest. In this respect, the Committee points out that legal provisions which subject the validity of collective agreements to the approval of the administrative authority for reasons of economic policy considerations in such a way that employers' and workers' organizations cannot freely determine employment conditions, are not in conformity with *Article 4* of the Convention. In these circumstances the Committee requests the Government to take measures to repeal the above-mentioned provisions of the Labour Code.
>
> In the same way, the Committee had observed that public servants not engaged in the administration of the State, agricultural workers and seafarers do not have the right to bargain collectively. In this respect, the Committee recalls that, under the terms of *Article 6* of the Convention, only public servants who work in the administration of the State (civil servants in government ministries and comparable bodies) may be excluded from its scope. Consequently, the Committee once again emphasizes that public servants who do not work in the administration of the State, agricultural workers and seafarers should enjoy the right to bargain collectively. In these circumstances, the Committee requests the Government to take the appropriate measures so that these workers can freely enjoy this right.
>
> The Committee requests the Government to inform it in its next report on any measures taken in relation to the questions raised so as to bring its legislation into full conformity with the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Malaysia (ratification: 1961)

The Committee notes the information supplied by the Government in its report.

1. Further to its previous comments, the Committee notes the Government's statement that section 15 of the Industrial Relations Act (IRA), which limits the scope of collective agreements for companies granted "pioneer status", is in the process of being amended and that a copy of the repealing legislation will be forwarded to the ILO as soon as it is passed by Parliament. The Committee recalls however that the Government has been referring to "positive measures to repeal section 15" since 1994, and would therefore request it to ensure that section 15 of the IRA is repealed shortly, and to provide a copy of the repealing legislation as soon as it is adopted.

2. In its previous comments, the Committee had referred to the restrictions on collective bargaining contained in section 13(3) of the IRA, with regard to matters known as internal management prerogatives (i.e. promotion, transfer, employment, termination, dismissal and reinstatement). The Government had indicated previously that such matters could not be predetermined in a collective agreement, as a predetermined agreement on

such matters would ultimately affect the rights of management to manage. In addition, the Government had emphasized that internal management prerogatives did not grant unfettered rights to employers, as demonstrated by numerous decisions of the Malaysian courts. The Committee considers that while issues such as promotion, employment and termination could eventually be considered as matters for management decision-making as part of its freedom to manage the enterprise, the other issues, namely transfer, dismissal and reinstatement, should not be excluded from the scope of collective bargaining. The Committee therefore requests the Government to indicate, in its next report, the steps taken or envisaged to bring section 13(3) of the IRA into conformity with *Article 4 of the Convention*.

3. In relation to the Committee's comments on certain restrictions on the right to bargain collectively for public servants other than those engaged in the administration of the State (section 52 of the IRA), the Government indicates once again that the Congress of Unions of Employees in the Public and Civil Services (CUEPACS), the officers of the Joint Councils and the Public Services Department meet on a regular basis to discuss issues affecting employees in the public service. Through these discussions, the public sector unions do contribute to the deliberations on remunerations, terms and conditions of employment and the resolution of anomalies arising therefrom. The Government emphasizes that the National Joint Councils provide a sufficient avenue for discussion and negotiation on salary and terms and conditions of employment of public servants and that CUEPACS as a national centre for public servants, plays an important and responsible role in protecting the interests of public servants, including wage negotiation.

While taking note of this information, the Committee would once again request the Government to provide specific information on how collective bargaining is encouraged and promoted in practice between public employers and public servants other than those engaged in the administration of the State, for example, by supplying information on the number of collective agreements concluded, the different categories and numbers of employees covered, the number of public sector unions acting as bargaining agents, etc.

Morocco (ratification: 1957)

The Committee notes the Government's report and the information given to the Conference Committee in June 1998 and the ensuing detailed discussions. The Committee also notes the Bills communicated by the Government concerning the Labour Code, occupational trade unions and the settlement of collective labour disputes, as well as the Government's statement that if the adoption of the draft Labour Code continues to be blocked by the resistance of one of the social partners, a different text will be adopted reinforcing the texts that are already in force in respect of freedom of association.

The Committee also notes the conclusions of the Committee on Freedom of Association concerning Case No. 1877 (see 307th Report, June 1997) concerning serious allegations of numerous dismissals based on trade union activities.

The Committee recalls that its previous comments focused on the following points:

— the need to strengthen the legislative provisions contained in Dahir No. 1-58-145 of 29 November 1960 with a view to guaranteeing in law and in practice adequate protection to workers against acts of anti-union discrimination, both at the time of recruitment and in the course of the employment relationship (including all measures which might prejudice workers, such as transfers, downgrading, involuntary retirement) coupled with effective and sufficiently dissuasive sanctions *(Article 1 of the Convention)*;

- the need to adopt specific legislative measures to protect organizations of workers against acts of interference by employers or by organizations of employers, in particular acts which are designed to promote the establishment of workers' organizations under the domination of an employer, or to support workers' organizations by financial or other means *(Article 2)*;
- the need to adopt appropriate measures to encourage and promote the development and utilization of machinery for voluntary negotiation of collective agreements between employers' and workers' organizations with a view to the regulation of terms and conditions of employment *(Article 4)*.

1. *Protection against acts of anti-union discrimination*. The Committee notes with interest that under the terms of section 365 of the amended draft Labour Code, "any discriminatory measure based on an employee's trade union membership or activity, in particular with regard to hiring, management and distribution of work, vocational training, promotion and social benefits, termination of employment and disciplinary measures, shall be prohibited". The Committee also notes that the Bill amending and supplementing Royal Decree No. 1-57-119 of 16 July 1957 concerning trade unions also provides, in section 1, paragraph 2, 2bis (new), that "no discrimination based on a worker's trade union membership or activity shall be carried out between workers and, in particular, in the area of employment, operation and distribution of work, occupational training, promotion, social benefits, termination of employment and disciplinary measures". The Committee lastly notes the fines provided for under section 384 of the Bill, which are doubled for second and subsequent offences.

2. *Protection of workers' and employers' organizations against acts of interference in each other's affairs*. The Committee notes with interest that section 1, 2bis, of the Bill amending and supplementing Royal Decree No. 1-57-119 of 16 July 1957 concerning trade unions stipulates that "organizations of employers and workers shall not be entitled to interfere in each other's affairs, either directly or indirectly, in any matter concerning their membership, work and management". The Committee also notes the financial sanctions referred to in section 2, 23 of the same Bill.

3. *Measures to promote collective bargaining*. The Committee notes that sections 112-139 of the draft Labour Code (Title V) concern the procedure for concluding a collective agreement.

The Committee also notes that the provisions of the draft Labour Code are supplemented by a Bill concerning the settlement of collective labour disputes which, in sections 14-16, provides for compulsory arbitration in cases where conciliation has not led to an agreement or where points of disagreement remain. The Committee recalls that compulsory arbitration is admissible only in the case of public servants employed in the administration of the State, or in essential services, or during the conclusion of the first collective agreement (at the request of the workers' organization concerned) or in the case of deadlock in bargaining which cannot be broken without the initiative of the authorities.

The Committee again asks the Government to take the necessary measures to ensure that the Bill will be in conformity with the Convention and in particular that it will not impose binding arbitration where conciliation fails.

Furthermore, the Committee notes that the Bills referred to by the Government apply to the private sector. The Committee recalls that under the terms of *Article 6* of the Convention, the Convention does not concern the situation of public servants engaged in the administration of the State. Consequently, the other categories of public employees and public servants should enjoy the rights and safeguards provided for by the Convention.

The Committee requests the Government to take the necessary measures in this regard and to inform it of any developments in this matter in its next report.

Finally, the Committee takes note of recent measures referred to by the Government with a view to promoting collective bargaining and which include, inter alia, the setting up of a National Committee on Social Dialogue.

4. The Committee expresses the firm hope that the Bills cited will be adopted in the very near future and asks the Government to keep it informed in this respect.

Netherlands (ratification: 1993)

The Committee takes note of the information provided by the Government in reply to the communication of the Netherlands Trade Union Confederation (FNV) concerning the Jobseeker Opportunity Act (WIW) which came into force on 1 January 1998.

In its communication, the FNV explained that the WIW aimed at providing access to the labour market to long-term unemployed and jobless young people by subsidizing their posts within enterprises and institutions. However, the FNV alleged that the subsidies were only granted on the condition that the workers concerned were not paid more than the legal minimum wage without taking into account the nature and the importance of the functions performed. The hourly wage for the WIW job during the first two years could not exceed the hourly minimum wage. In addition, the subsidy paid for the job was based on a 32-hour working week with the result that the total income of WIW workers would be 8/9ths of the legal minimum wage. If it was decided after two years to transform the job into a job of unlimited duration, it would be permitted to pay a maximum of 120 per cent of the legal minimum wage for the applicable 32-hour working week following a procedure to be defined in the legislation. The FNV believed that the law in question (WIW) was in contravention with the principle of free collective bargaining in terms of fixing wages and other working conditions.

For its part, the Government explained that the WIW formed an integral part of the entire range of measures taken in order to combat long-term unemployment effectively. It was expected that the scheme imagined would aim at the creation of 40,000 extra regular jobs which would be taken by former unemployed people. The Government specified that the WIW left the content of the labour agreement to the employees and employers imposing no restrictions in respect of the substance of collective bargaining agreements. Instead, the WIW determined the nature and the extent of the subsidized posts that could be offered by employers. In its latest communication, the Government added that on 12 June 1998 a collective labour agreement was concluded between the Association of Dutch Local Authorities and the trade unions representing the workers covered by the WIW. The new collective labour agreement was applicable to workers who would start working after 1 January 1999 as well as to workers who were, before its entry into force, employed under the Youth Work Guarantee Act or under other schemes regulated by the WIW. In addition, the collective agreement took into account work experience when integrating workers into its pay scales; it was also stipulated that former WIW workers might earn 120 per cent of the legal minimum wage as soon as they reached the age of 64 and that they were integrated into the collective labour agreement on the basis of their age from the age of 57 upwards. It was further agreed that the parties would examine the method of payment of workers falling into the WIW, considering the necessity, the desirability and the feasibility of introducing a pay system based on job evaluation; finally the parties aimed at setting up a pension scheme by 1 January 1998.

According to the facts brought to its knowledge and taking into account the collective agreement concluded between the Association of Dutch Local Authorities and the trade unions representing the workers covered by the WIW, the Committee is of the opinion that this situation is not incompatible with the Convention; however, it considers that recourse to such schemes on a successive basis could raise problems and therefore requests the Government to keep it informed in this regard.

Finally, the other issues addressed in the Committee's previous comments and concerning *Articles 1 and 2 of the Convention* are still pending and will be examined in the regular reporting cycle.

Nigeria (ratification: 1960)

The Committee notes that a Commission of Inquiry was appointed at the 272nd Session of the Governing Body (June 1998) in respect of the non-observance by Nigeria of this Convention, as well as of Convention No. 87. It notes, however, that, at the same session, the Governing Body decided that the commencement of the work of the Commission should be delayed for 60 days in order to allow a direct contacts mission to take place. The Committee takes due note of the report of this direct contacts mission which took place from 17-21 August 1998 and the report of the Officers of the Governing Body to its 273rd Session (November 1998). In particular, it notes the decision of the Governing Body to suspend the work of the Commission of Inquiry and to request the Director-General to transmit the report of the direct contacts mission to this Committee for examination at its November-December 1998 session in connection with the application by Nigeria of the relevant ratified Conventions.

The Committee notes the reference in the direct contacts mission report to the need to consider within the contemplated revision of labour legislation the provisions of *Article 4 of the Convention* which call for measures to be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations with a view to the regulation of terms and conditions of employment by means of collective agreements. The Committee notes from the report of the direct contacts mission that steps have been taken in a positive direction. It requests the Government to keep it informed in future reports of any measures taken or envisaged in this regard.

Peru (ratification: 1964)

The Committee notes the information provided by the Government in response to the observations of the Federation of Workers in the Lighting and Power Industry of Peru concerning restrictions on protection against anti-union discrimination and collective bargaining contained in provisions of the Industrial Relations Bill. The Committee notes the conclusions and recommendations of the Committee on Freedom of Association with regard to Case No. 1906 in June 1998 (see 310th Report of the Committee, paragraphs 551-556). The Committee also notes the observations of the United Union of Technicians and Specialized Auxiliary Workers of the Peruvian Social Security Institute but observes that — they do not relate to the application of the Convention.

With regard to section 21 of the Bill which was criticized by the Federation and allows the inclusion of workers who enjoy protection on the list of *collective dismissals* resulting from an *objective cause*, the Committee notes the Government's information according to which this exceptional case would arise as a result of external factors that make continuation of the employment relationship impossible (unforeseen circumstances and *force majeure*, economic, technological, structural or other similar reason, dissolution and liquidation of a company, restructuring of assets) and are not connected with trade union activity. The Government also indicates that under the terms of legislation, there are procedures, applicable in every case of objective reasons for the termination of employment contracts, by which the objective circumstances cited as the cause of the termination can be fully examined, and that workers affected can contest the administrative decision.

The Committee points out that, although national legislation provides some protection against acts of anti-union discrimination, for that protection to be effective, courts must be able to give a ruling without delay when allegations of anti-union acts are made.

With regard to section 26 of the Bill, according to which no union officer is entitled to take more days of leave than the number of days actually worked by him or her in one year, the Committee notes the Government's information and points out that such a provision would constitute an unjustifiable restriction on collective bargaining and should therefore not be applied while there exists a collective agreement that is more favourable to the workers, as envisaged in section 20 of the Rules under the Industrial Relations Act currently in force. The Committee requests the Government to take the necessary measures to amend section 26 of the Bill in the appropriate way.

With regard to the allegation of restrictions on the right to collective bargaining in the construction sector under the terms of Bill No. 2266 (Case No. 1906), the Committee notes the Government's statement that the Industrial Relations Bill supersedes Bill No. 2266 and removes such restrictions. The Committee also requests the Government to ensure that the Bill in question is in full conformity with the terms of the Convention, in particular that all restrictions on the right to collective bargaining in the construction industry are removed, and to keep it informed of progress made in this regard.

The Committee further notes the drafting by the President of the Congressional Labour and Social Security Committee of a new draft substitute Industrial Relations Bill.

In this respect, the Committee observes with interest that the substitute text in question does not reinstate the obligation to renegotiate collective agreements in force (fourth transitional and final section and section 43(*c*) of Act No. 25593), a provision that had been criticized by the Committee of Experts.

Nevertheless, the Committee notes that the text in question does not take into account the following points raised by the Committee of Experts:

— the absence of effective and sufficiently dissuasive sanctions to guarantee the protection of workers against anti-union discrimination (for example, at the time of hiring, acts detrimental to workers other than dismissal, acts of interference by employers in the affairs of trade unions) *(Articles 1 and 2 of the Convention)*;

— the obstacles to voluntary negotiation resulting from the requirements of a majority, not only of the number of workers, but also of enterprises, in order to conclude a collective agreement for a branch of activity or occupation (section 46 of the Industrial Relations Act of 1992) *(Article 4)*;

— the possibility for the employer of having recourse to the Ministry of Labour without the agreement of the workers for the purposes of modifying, suspending or substituting conditions of work previously agreed upon (sections 1 and 2 of Legislative Decree No. 25921 of 3 December 1992) *(Article 4)*.

In addition the Committee observes that the substitute text contains a number of provisions which could pose problems of conformity with the Convention and concerning which the Committee would make the following comments:

- with regard to sections 30 and 40 of the substitute text, the Committee considers that these sections should safeguard the right to collective bargaining of a minority trade union, at least on behalf of its members, where no majority trade unions exists;
- with regard to the final paragraph of section 39 according to which "in the absence of an agreement, negotiations should be conducted at the level indicated in section 38(a) of the present Act" (meaning at enterprise level) the Committee considers that this section should be amended to avoid imposing negotiations at enterprise level;
- with regard to the requirement of an absolute majority, both of the number of workers of a branch of activity or occupation and of enterprises, in order to conclude a collective agreement for the branch of activity or occupation in question (section 41), the Committee takes the view that the requirement is excessive and will in many cases make negotiations impossible at the level indicated, and for this reason the percentages required should be reduced to half;
- lastly, in the Committee's view, the Act should provide expressly for the right of federations and confederations to bargain collectively.

The Committee hopes that the new draft text of the Industrial Relations Act will take into account the foregoing comments and that it will be adopted in the very near future. The Committee requests the Government to inform it in its next report of any progress made in this regard.

Saint Lucia (ratification: 1980)

The Committee notes with regret that for the eighth year in succession the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In its previous comments, the Committee recalled the importance of sufficiently effective and dissuasive measures to ensure the application in practice of basic legal standards prohibiting acts of anti-union discrimination.
>
> It recalls that section 3(2) of the Labour Regulations of 1960 (No. 15) provides that it is the duty of the Labour Commissioner to ensure that workers enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
>
> The Government is requested to indicate, in its next report, the manner in which section 3(2) is applied in practice, including any statistics concerning the number of complaints of anti-union discrimination brought to the attention of the labour commissioner and whether any sanctions have been applied in such cases or compensation ordered for the worker who has suffered such acts of discrimination.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sierra Leone (ratification: 1961)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Articles 1 and 2 of the Convention. Need to adopt specific provisions accompanied by sufficiently effective and dissuasive sanctions for the protection of workers and workers' organizations against acts of anti-union discrimination and acts of interference.* The Committee had previously noted that the revision of the labour laws, prepared with ILO technical assistance, had already been submitted to tripartite meetings, that the comments of the tripartite body have been received and that the document has just been forwarded to the Law Officers' Department. The Committee asks the Government to keep it informed of any

further progress made in the preparation of the final draft document and to provide a copy of the revised legislation as soon as it has been adopted.

Article 4. With regard to the right to collective bargaining of teachers, the Committee would request the Government to provide information in its future reports on any collective agreements covering teachers that have been concluded.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

South Africa (ratification: 1996)

The Committee notes the Government's first report, as well as the Constitution of the Republic of South Africa (Act No. 108 of 1996), and the Labour Relations Act (Act No. 66 of 1995) attached thereto. The Committee notes with satisfaction that further to the recommendations made by the Fact-finding and Conciliation Commission on Freedom of Association (see Prelude to change: Industrial relations reform in South Africa, *Official Bulletin*, Special Supplement, 1992), the Labour Relations Act, 1995, constitutes a considerable improvement over the previous legislation. In particular, the Committee welcomes the fact that the Labour Relations Act, 1995, has broad coverage, including civil servants and rural workers within its scope. The Act does not contemplate the possibility for the authorities to modify the contents of freely concluded agreements, nor for them to exclude certain areas or classes of work from the agreements; and contains a number of guarantees and facilities for the voluntary collective bargaining process.

Sri Lanka (ratification: 1972)

The Committee notes the information provided by the Government in its report.

1. Further to its previous comments on the need to adopt legislative provisions in order to ensure full conformity with the requirements of *Articles 1 and 2 of the Convention*, the Committee notes the Government's statement that amendments to the Industrial Disputes Act are under consideration. The Committee trusts that these amendments to the Industrial Disputes Act will ensure the full protection of workers against acts of anti-union discrimination and of workers' organizations against acts of interference by employers and their organizations accompanied by effective and sufficiently dissuasive sanctions, in accordance with the requirements of the Convention. It requests the Government to supply a copy of these amendments as soon as they are adopted.

2. With reference to a previous observation made by the Lanka Jathika Estate Workers' Union that a draft collective agreement in the plantation sector was being discussed, the Committee had asked the Government to keep it informed of developments. The Committee notes that the Government points out that the draft collective agreement as well as five others had been signed in the plantation sector.

3. Further to its previous request for information on any progress made in collective bargaining in the free trade zones, the Committee notes that the Government indicates that *Article 4* is applied in all sectors of the economy including free trade zones and the industrial establishments within the purview of the Sri Lanka Board of Investments and that details on collective agreements are not available at the moment. The Committee urges the Government to provide more detailed and concrete information in this respect including the number of collective agreements concluded, the number of workers covered, etc., in these free trade zones and industrial establishments.

United Republic of Tanzania (ratification: 1962)

The Committee notes the report supplied by the Government.

The Committee had recalled for several years that the provisions of sections 22(e)(i), (v), (vii) and (ix), 23(3)(c) and 39(7)(c) of the Permanent Labour Tribunal Act, No. 41 of 1967, as amended in 1990 and 1993, give the Court the power to refuse to register a collective agreement if the agreement is not in conformity with the Government's economic policy. The Committee had observed that the Government had explained that registration of collective agreements was intended to give them compulsory force and had admitted that registration had sometimes been refused.

The Committee notes with interest that the Government states in its report that it is seriously looking at ways of amending the legislation to bring it into conformity with the Convention. The Committee recalls as a general rule, that the provisions requiring prior approval of a collective agreement for it to enter into force are only compatible with the Convention provided they merely stipulate that approval may be refused if the collective agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation.

The Committee requests the Government to indicate in its next report all the measures taken or envisaged to bring the legislation into conformity with the Convention.

Trinidad and Tobago (ratification: 1963)

The Committee takes note of the information provided by the Government in its report according to which the tripartite committee appointed to review the Industrial Relations Act, Chapter 88:01 submitted its report to the Cabinet but that no further action has yet been taken. For its part, the tripartite committee appointed to review all service acts (Civil Service Act, Fire Service Act and Prison Service Act) is examining the comments of the Committee of Experts.

The Committee recalls its previous observation which addressed the following issues.

1. With regard to the need to amend provisions that afford a privileged position to registered associations, without providing objective and pre-established criteria for determining the most representative association (sections 24(3) of the Civil Service Act, 28 of the Fire Service Act and 26 of the Prison Service Act), the Committee notes that according to the Government's report, section 28 of the Fire Service Act has been repealed by virtue of Act No. 10 of 1997 and that similar action will be taken with respect to the Prison Service Act. The Committee recalls that the procedure for recognizing unions as exclusive bargaining agents should provide for specific safeguards such as, inter alia (a) the certification to be made by an independent body; (b) the representative organization to be chosen by a majority vote of the employees in the unit concerned; (c) the right of an organization, which in a previous trade union election failed to secure a sufficiently large number of votes, to request a new election after a stipulated period; (d) the right of any new organization other than the certified organization to demand a new election after a reasonable period has elapsed (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 240). The Committee requests the Government to indicate in its report the outcome of the work of the tripartite Committee appointed to review the Civil Service and Prison Service Acts.

2. With regard to the necessity to amend section 34 of the Industrial Relations Act, Chapter 88:01, in order to allow a union whose members constitute the largest number of workers in a bargaining unit even if it is unable to reach a membership of 50 per cent of the workers in that bargaining unit, to negotiate collectively employment conditions, and

to give to minority unions the right to pursue individual grievances at least on behalf of their members, the Committee notes that the Tripartite Committee set up to review the Industrial Relations Act has been set up to actively consider the comments of the Committee of Experts. It requests the Government to indicate in its next report the measures taken to bring the legislation into conformity with the requirements of *Article 4 of the Convention*. It also requests the Government to inform it of developments concerning the work of the above-mentioned Tripartite Committee.

3. With regard to the need to establish an appropriate mechanism to deal with the grievances of the Central Bank's employees, the Committee understands that section 20 of the Central Bank Act, Chapter 79:02 as amended by Act No. 23 of 1994, establishes a mechanism for the settlement of disputes between the Central Bank and its employees according to which the Minister of Labour has the power to refer disputes to a special tribunal whose decision is final (see paragraphs (e) and (f) of the said section). The Committee had found it difficult to reconcile such ministerial intervention with the principle of the voluntary nature of negotiation recognized by *Article 4* and was of the opinion that whatever mechanism of settlement of disputes was adopted, its objective should be to encourage free and voluntary collective bargaining, so it should incorporate the possibility of suspending compulsory arbitration if the parties wanted to resume negotiations. The Committee notes that its views have been transmitted to the Tripartite Committee set up to review the Industrial Relations Act, and requests the Government to keep it informed in this respect.

4. The Committee requests the Government to take the necessary measures to bring its legislation into conformity with the Convention and to keep it informed in its next report in this regard.

Turkey (ratification: 1952)

The Committee notes the information supplied by the Government in its report, as well as the information provided to the Conference Committee in June 1998 and the detailed discussion which took place thereafter. The Committee also notes the comments made by the Confederation of Turkish Employers' Associations (TISK), the Confederation of Turkish Trade Unions (TÜRK-IŞ) and the Energy, Road, Construction, Infrastructure, Title Deed Land Survey Public Sector Employees' Trade Union.

1. *Articles 1 and 3 of the Convention.* In its previous observations, the Committee had noted the comments made by TÜRK-IŞ on the insufficient protection against acts of anti-union discrimination under Trade Union Act No. 2821. In this regard, the Committee notes the information supplied to the Conference Committee whereby the Government indicates that sections 29, 30 and 31 of Act No. 2821 and the sanctions stipulated therein provide for sufficient protection against acts of anti-union discrimination. More specifically, in case of discrimination at the time of recruitment, the fine envisaged is not less than half of the prevailing monthly wage. Moreover, although according to the Turkish legislation the burden of proof rests with the plaintiff, an amendment made to Act No. 2822 in 1988 stipulates that communication to the employer by the union of a worker's acquisition of membership should be delayed until it could have no adverse effect at all on the right to organize and bargain collectively. In the event of the dismissal of a worker due to union-related activities, in addition to the rights conferred by labour legislation, such as severance indemnities and notice pay, the employer is required to pay compensation which is not less than the worker's total annual wages. This compensation is payable not only in the case of dismissal, but also for other acts of anti-union discrimination, for example with regard to the distribution of work or promotion. Various

rulings by the courts show that this type of compensation is granted more frequently than had been claimed by TÜRK-IŞ. Moreover, section 29 of Act No. 2821 provides for specific protection for trade union officials, which includes their reinstatement in their previous or similar jobs within one month of their request for reinstatement, provided they apply to their previous employer within three months of losing their positions in the trade union. However, until the adoption of enabling legislation consistent with the Termination of Employment Convention, 1982 (No. 158), shop stewards are the only category granted complete job security, including reinstatement. Work is under way on the formulation of new legislation in this matter.

The Committee takes note of this information and requests the Government to keep it informed of any progress made in the adoption of this legislation. It hopes that it will ensure effective protection to all workers against acts of anti-union discrimination. It further requests the Government to provide copies, along with its next report, of judicial decisions which show that compensation in case of various acts of anti-union discrimination is granted quite frequently.

2. *Article 4.* With regard to a number of limitations on collective bargaining mentioned by TÜRK-IŞ in its observations (prohibition of collective bargaining for confederations, industry-wide bargaining is not admitted, only one collective agreement is allowed at a given level, ceilings are imposed on indemnities, there is a 60-day time-limit for bargaining), the Committee notes that the information supplied by the Government representative to the Conference Committee, while justifying these restrictions, appears to confirm their existence with the exception of the 60-day time-limit for bargaining. Moreover, with regard to the dual criteria contained in legislation for determining the representative status of trade unions for collective bargaining purposes, the Government representative indicated that endeavours to abolish this requirement were being pursued but that it needed the consent of the social partners which had raised objections thereto.

The Committee recalls that all the above measures constitute serious limitations on collective bargaining. It requests the Government to provide information, in its next report, on the measures taken to remove these restrictions with a view to promoting the voluntary negotiation of terms and conditions of employment through collective agreements in accordance with *Article 4*.

3. Regarding the denial of the collective bargaining rights of public servants, the Committee notes the statement made by the Government representative to the June 1998 Conference Committee to the effect that a draft Bill on public servants' union formulated in accordance with the Turkish Constitution (article 53), as amended in 1995, had been submitted to the Grand National Assembly. In addition to guaranteeing freedom of association for public servants, the Bill envisaged judicial appeal mechanisms and an impartial conciliation board. The provisions of the Bill had been debated extensively in Parliament and nearly half of them had been approved. It was expected that the remaining part would also be debated and enacted. In the meantime, Act No. 4275 of 12 June 1997 had amended the Public Servants' Act No. 657 to recognize the right to organize trade union and higher level organizations for public servants.

With regard to the collective bargaining rights of public sector workers, the Government representative indicated that public sector workers under employment contracts had always enjoyed the same rights as private sector workers. Contract personnel employed in public economic enterprises would be covered by the Bill on public servants' unions, since they were considered to be public officials employed in the continuous and essential services of the State.

The Committee once again expresses the firm hope that the Bill on public servants' unions will grant collective bargaining rights to public servants with the sole possible exception of those engaged in the administration of the State and that it will be enacted in the near future and requests the Government to inform it, in its next report, of any progress made in this regard and to send a copy of the Bill once it is adopted.

4. With regard to the issue of the collective bargaining rights of workers in export processing zones (EPZs), the Committee notes that the information provided to the Conference Committee confirms that if negotiations fail, Act No. 3218 of 1985 imposes compulsory arbitration in EPZs for the settlement of collective labour disputes, although this Act would no longer apply from the year 2000 to the Aegean Free Trade Zone, which employs some 90 per cent of all the workers concerned.

The Committee would nevertheless recall that the imposition of such compulsory arbitration runs contrary to the principle of the voluntary nature of negotiations established in *Article 4*. It therefore requests the Government to take the necessary measures to ensure that all workers in all EPZs enjoy the right to negotiate freely their terms and conditions of employment.

The Committee requests the Government to give detailed information in its next report on the points raised above. It requests the Government once again to consider availing itself of the assistance of the Office with a view to removing the obstacles which prevent the Convention from being fully applied.

Ukraine (ratification: 1956)

The Committee notes the communication from the Independent Trade Union of Miners (NPG) and the information provided by the Government in this respect.

The Committee notes the NPG's statement that the management of the N.P. Bakarov Mine in Krasnodon, violates the provisions of the Convention, the national legislation and the collective agreement and discriminates against the trade union's leaders and its members. In particular, the NPG states that: (1) contracts are offered to employees who guarantee that they will not become members of the NPG; (2) NPG members are the first to be dismissed when dismissals occur; (3) mine managers' salaries are dependent upon a decrease in the number of NPG members; (4) salaries have not been paid to NPG leaders over a significant period of time and a certain number of trade union leaders have been unlawfully dismissed; (5) the management has taken a decision to shut down the NPG office; (6) miners did not receive wages over a period of several months in 1996, 1997 and 1998. According to the NPG, following the trade union picket of Lugansk administrative authority offices in July 1997, demanding the authority's compliance with the Ukrainian Constitution, labour legislation and the collective agreement, the Lugansk administrative authorities gave their assurance that, in future, they would comply with the above legal provisions and agreements, which has not proved to be the case; representatives from the Ministry of Labour and the Ministry of the Coal Industry visited the enterprise without investigating the violations of miners' rights.

The Committee notes the Government's statement that officials of the Ministry of Labour and Social Security and the Ministry of the Coal Industry visited Bakarov Mine to verify the information provided by the NPG in respect of the violations of Conventions Nos. 87 and 98. Similarly, the Committee notes with interest the Government's statement that the NPG and the mine's management have concluded a collective agreement which requires the management to provide the necessary conditions for the NPG to carry out its activities, including the following provisions: to grant NPG members access to the workplace; to receive information relative to the enterprise's activities; to grant trade union leaders paid leave to carry out their activities; to supply facilities to the NPG; to apply the same rules on the payment of wages, recruitment, dismissal, annual leave and shifts to all workers regardless of whether they are trade union members; the agreement on vacations and redundancy plans for dismissal between the mine management and the trade union, in accordance with the legislation in force. Finally, the Committee notes the Government's information that the other allegations made by the NPG do not constitute violations of the Ukrainian legislation and that the NPG signed other collective agreements in 1997 and 1998.

The Committee regrets the fact that the Government has not provided detailed information on the specific acts of discrimination alleged by the NPG (recruitment subject to non-membership of the trade union, dismissal of trade union leaders and members, etc.). The Committee requests the Government to carry out expeditiously a thorough investigation in this respect and to take the necessary measures to remedy the acts of discrimination which it concludes have occurred. The Committee requests the Government to ensure that the practices of N.P. Bakarov Mine and Krasnodon enterprise are in conformity with *Article 1 of the Convention.*

The Committee asks the Government to ensure the unimpeded ability of the NPG representatives to participate in the joint representative body as required by section 4 of the Act on Collective Agreements and Accords, in conformity with the requirements of *Article 2* of the Convention.

In conclusion, the Committee notes the Government's statement that Parliament is examining bills on trade unions and social partners to amend the Collective Agreements Act and that the Bill in respect of the settlement of collective disputes has been adopted in March 1998. The Committee requests the Government to inform it in its next report on the contents and developments in respect of the above bills and the content and application of the Law of March 1998.

Venezuela (ratification: 1968)

The Committee notes that the Government forwarded a copy of the tripartite agreement concluded between the Ministry of Labour, the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS) and the Workers' Confederation of Venezuela (CTV). The above agreement provides that until a draft text partially reforming the Organic Labour Act, measures must be taken in response to the suggestions made by the ILO supervisory bodies (as a result of the representation presented by FEDECAMARAS and the International Organization of Employers under article 24 of the ILO Constitution) which can be implemented by the labour administration, and that within a maximum of two months, a tripartite committee will be established to prepare the necessary instruments to bring the national law and practice into conformity with international standards.

The Committee recalls that its previous comments referred to: (1) strengthening the sanctions applicable in cases of anti-union discrimination and interference so that they are sufficiently effective and dissuasive (sections 637 and 639 of the Organic Labour Act which limits the fine to two minimum salaries), and (2) restrictions on collective bargaining under section 473, paragraph 2 of the Organic Labour Act, which provides that a trade union must represent an absolute majority of the workers of an enterprise to negotiate a collective agreement.

The Committee notes that the Government has not referred to the matter of sanctions applicable in the case of anti-union discrimination and interference. In this respect, the

Committee again requests the Government to take the necessary measures to ensure that sanctions applicable in cases of anti-union discrimination and interference (sections 637 and 639 of the Organic Labour Act) are sufficiently dissuasive and effective. The Committee requests the Government to inform it in its next report on any measures adopted in this respect.

With regard the requirement that a trade union must in all cases represent the absolute majority of the workers of an enterprise to be able to negotiate a collective agreement (section 473(2), of the Organic Labour Act), the Committee notes with interest that the above tripartite agreement provides that this section must be amended so that, in cases where there is no trade union to represent the absolute majority of workers, minority organizations may jointly negotiate a collective agreement, or at least conclude a collective agreement on behalf of their members.

The Committee expresses the hope that the committee responsible for preparing reforms of the Organic Labour Act will be established within the time limit provided for in the agreement and that these texts which will bring the law into conformity with the Convention will cover all the provisions which have been the subject of its comments. The Committee requests the Government to provide it with further information in its next report.

Yemen (ratification: 1969)

The Committee notes the information supplied by the Government in its report.

1. With regard to the Committee's previous comments on the need to adopt specific provisions, accompanied by effective and sufficiently dissuasive sanctions, to guarantee the protection of workers against any act of anti-union discrimination by employers and the protection of workers' organizations against acts of interference by employers, the Government refers to various provisions of the draft Trade Unions Act which would guarantee such protection, in conformity with *Articles 1 and 2 of the Convention.*

The Committee firmly hopes that the draft Trade Unions Act will be adopted shortly and requests the Government to send a copy thereof as soon as it is adopted.

2. With reference to its previous comments on the need to adopt appropriate measures to encourage and promote the full development and utilization of machinery for the voluntary negotiation of collective agreements, the Committee notes with interest that section 32 of the new Labour Code (No. 25 of 1997) stipulates that: "The union committee or workers' representatives shall collectively discuss, agree upon and sign the draft collective agreement at a general meeting of the workers and on their behalf. Such agreement shall be binding upon all the workers. Any collective agreement not collectively discussed with the workers shall be invalid" (subsection 2) and that "it shall be forbidden to conclude an individual contract of employment with terms at variance with those of a collective agreement in respect of work covered by the said collective agreement" (subsection 4(a)). The Committee further notes that employers and the union committees or general union representing workers in more than one workplace may conclude a common collective agreement (section 33(1)) and that employers and union committees that are not parties to such agreement may accede to it (section 33(2)). The Committee requests the Government to keep it informed of the application in practice of these provisions, i.e. the number of collective agreements concluded, the sectors covered, the number of workers covered, etc.

3. With regard to the Committee's previous comments on the need to amend sections 68, 69 and 71 of the Labour Code of 1970 which governed the compulsory

registration of collective agreements and the possibility of their cancellation in the event that they did not conform with the security and/or economic interests of the country, the Government indicates that Act No. 5 of 1970 was repealed by the new Labour Code, Act No. 5 of 1995, as amended by Act No. 25 of 1997.

The Committee notes that section 34(2) of the new Labour Code provides for the compulsory registration of collective agreements. The Committee recalls that provisions of this kind are compatible with the Convention, provided they merely stipulate that approval may be refused if the collective agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation. On the other hand, if legislation allows the authorities full discretion to deny approval or stipulates that approval must be based on criteria such as compatibility with general or economic policy of the Government, it in fact makes the entry into force of the collective agreement subject to prior approval, which is a violation of the principle of autonomy of the parties (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 251). In this respect, the Committee notes that section 32(6) of the new Labour Code stipulates that a collective agreement shall be invalid if any of its terms is "likely to cause a breach of security or to damage the economic interests of the country ...". Since this provision makes a collective agreement subject to prior approval before it can enter into force, or allows the agreement to be cancelled on the grounds that it runs counter to the Government's security and/or economic interests, the Committee considers it to be contrary to *Article 4* of the Convention and requests the Government to take the necessary measures to amend it in line with the principles enunciated above. The Committee requests the Government to keep it informed of any developments in this regard.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Colombia, Estonia, Ethiopia, Kyrgyzstan, Latvia, Malawi, Mozambique, Nepal, Philippines, Russian Federation, Sao Tome and Principe, South Africa, Suriname, Tajikistan, United Republic of Tanzania, Zambia*.

Information supplied by *Azerbaijan, Barbados* and *Bosnia and Herzegovina* in answer to a direct request has been noted by the Committee.

Convention No. 99: Minimum Wage Fixing Machinery (Agriculture), 1951

Guinea (ratification: 1966)

See under Convention No. 26.

Morocco (ratification: 1960)

The Committee notes the information provided by the Government in response to its previous comments.

Article 2 of the Convention. In its previous comments, the Committee had particularly requested the Government to provide information in respect of the practical application (including the violations observed and sanctions imposed) of certain legislative or regulatory provisions governing the statutory minimum wage (section 39 of the Dahir to promulgate Act No. 1-72-219 of 24 April 1973), as well as information on the negotiations in respect of the price of goods produced by the undertaking and supplied to the worker (section 42 of the above Act), and the amount of the daily wage which must be paid in cash in agricultural jobs (section 2 of Decree No. 2-89-247 of 28 April 1989).

The Committee notes the Government's statement to the effect that the payment in cash of the minimum wage fixed by Decree is compulsory and that the application of the minimum wage shall in no way lead to the abolition or reduction of allowances in kind which agricultural workers enjoy on a regular basis.

Article 3, paragraph 3. In its previous comments, the Committee requested the Government to indicate whether workers' organizations in the agricultural sector are among those consulted within the framework of the minimum wage fixing machinery.

The Government indicates, in particular, in its response, that the joint declaration signed with the social partners in August 1996 establishes an appropriate procedure enabling professional organizations to be consulted on questions concerning the fixing and the application of the statutory minimum wage. The Government states that the recent increases in the statutory minimum wage were the result of extensive consultations with the parties concerned.

The Committee notes with regret that the Government has still not provided specific information in reply to the question of whether the workers' organizations in the agricultural sector are consulted within the framework of the minimum wage fixing machinery which concerns this category of workers. In the light of the fact that this question has been raised since 1992, the Committee trusts that the Government will not fail to provide the information required in the near future, namely: (i) a copy of the above declaration; (ii) a copy of the text governing the composition, the activities and the responsibilities of the committee on which the representatives of the agricultural workers' organizations sit.

Moreover, the Committee is addressing a request directly to the Government in respect of certain other points.

[The Government is asked to report in detail in 2000.]

Turkey (ratification: 1970)

The Committee notes the information provided in the Government's report in reply to its previous observation, and the comments respectively made by the Confederation of Turkish Employers' Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-IŞ) concerning the application of the Convention in the agricultural and forestry sector.

Article 1 of the Convention. The Committee notes again the Government's indication that the draft Bill on the amendment and the repeal of certain sections of the Labour Act (No. 1475) which provides for the inclusion of agriculture and forestry workers within the scope of the Labour Act, is still under review. It requests the Government to continue to communicate information in this respect, in particular with regard to minimum wage fixing in the agricultural and forestry sector.

Article 3, paragraph 3. In its previous comments concerning association on equal footing of employers and workers in the agriculture sector in the working of the Minimum Wage Fixing Board, the Committee requested the Government to send a copy of the text appointing the present members of this Board, along with other regular members.

The Committee notes the list of the members and alternate members of the Minimum Wage Fixing Board composed of five government representatives, five employers' representatives and five workers' representatives. It also notes the Government's indication that: (i) these employers' and workers' representatives are respectively selected from different branches of activity by the confederation of employers and the confederation of workers that have the highest representation; and (ii) the Board meets with the participation of at least ten members and acts by majority vote at every stage of its deliberations.

In its comments under Convention No. 26, the TISK confirms that the Minimum Wage Fixing Board is based on a tripartite structure. It also states, inter alia, that: (i) since 1989, application of minimum wage in the agricultural sector is the same as that of industrial and services sectors; (ii) although a period of two years is contemplated by the legislation, the Board meets and determines new minimum wages every year; and (iii) the Board has proposed to the Government the establishment of a tripartite committee, which would carry out work on wage-fixing methods and principles in order to adjust the Minimum Wage Regulation accordingly; this Committee has already been established, but its work has not been completed yet. According to the TISK, the entire legislation, including the Minimum Wage Regulation does not meet with the requirements of the country and that it impedes harmonization with today's economic and social conditions. The TISK believes that the present minimum wage practice encourages particularly the growth of unemployment and informal sector and weakens the power of trade unions. It requests major changes to be made in the legislation in respect of minimum wage, minimum wage fixing and revision, and tax burden on minimum wage.

The Committee notes that, although the observation made by the TISK was supplied with the Government's report for Convention No. 99, the Government does not provide any response to these observations. The Committee requests the Government to provide information as regards this observation to be dealt with in the comments made by the Committee concerning the application of Convention No. 26 in the country.

Article 4, paragraph 1, and Article 5, in conjunction with point V of the report form. In its previous comments, the Committee requested the Government to provide information in respect of the observation made by the TÜRK-IŞ concerning lack of information, supervision and sanctions with regard to the enforcement of minimum wage rates in the agricultural and forestry sector. This observation has been renewed by the TÜRK-IŞ.

In reply to these comments, the Government indicates that section 33 of Labour Act No. 1475 provides that the decisions of the Minimum Wage Board become effective only after their publication in the *Official Gazette*. Section 9 of the Minimum Wage Regulation also provides that the decisions of the Board become effective after their publication in the *Official Gazette* and that they are put into force as of the first day of the month following their publication in the *Official Gazette*. The minimum wages fixed by the Board are disclosed by the Ministry of Labour and Social Security, and immediately spread nationwide by mass media. According to the Government, there exist no deficiencies, as alleged by the TÜRK-IŞ, in publicizing the Board's decisions. As regards the supervision of minimum wages in the agriculture and forestry sector, the Government specifies that section 4 of Labour Act No. 1475 provides that labour inspectors of the Ministry of Labour and Social Security carry out general controls at the workplaces or upon complaints. During these inspections, the employers who are found in breach of section 33 of Labour Act No. 1475 are sanctioned to pay an administrative fine in accordance with section 99/B(2) of the same Act. However, the Government states that no statistical data are kept with regard to supervision held in the agricultural sector. It also indicates that the draft Bill to multiply by five the amounts of the fines set out in Labour Act No. 1475 is still on the agenda of the Grand National Assembly.

The Committee hopes that the draft Bill to multiply by five the amounts of the fines set out in Labour Act No. 1475 will be soon adopted and that the Government will send a copy of the relevant text as soon as it is adopted. It also requests the Government to provide information on the results of the inspections carried out, in particular in the agricultural and forestry sector (e.g. the number of the violations reported concerning minimum wage provisions, the sanctions imposed, etc.).

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Australia, Austria, Belgium, Central African Republic, Comoros, Côte d'Ivoire, Djibouti, Gabon, Germany, Grenada, Hungary, Ireland, Italy, Kenya, Malawi, Mauritius, Morocco, Peru, Philippines, Poland, Seychelles, Sierra Leone, Slovakia, Tunisia, Zimbabwe.*

Convention No. 100: Equal Remuneration, 1951

General observation

In recent years the Committee has been able to note with satisfaction, or interest, the adoption of national legislation requiring the payment of equal remuneration for men and women for work of equal value, in accordance with the terms of the Convention. It would now appear to the Committee that a greater understanding is emerging among governments and the social partners that, in order to apply the Convention fully, efforts must be made that go beyond the mere removal of male and female wage classifications. Nevertheless, the Committee notes that difficulties in the application of the principle of equal remuneration for work of equal value continue to exist in practice. In this regard, the Committee recalls its 1990 general observation under the Convention on this point and reaffirms its continued relevance. The Committee would therefore like to emphasize that an analysis of the position and pay of men and women in all job categories within and between the various sectors is required to address fully the continuing remuneration gap between men and women which is based on sex.

The Committee notes that there is a significant disparity in the type and extent of information, including statistical data, supplied to it by the ratifying governments. More complete information is required in order to permit an adequate evaluation of the nature, extent and causes of the pay differential between men and women and the progress achieved in implementing the principle of the Convention. Accordingly, in order to assist the Committee in evaluating the application of the principle of equal remuneration, and in accordance with the provisions of the Labour Statistics Convention, 1985 (No. 160), the Committee asks the governments to provide the fullest possible statistical information, disaggregated by sex, in their reports, with regard to the following:

(i) the distribution of men and women in the public sector, the federal and/or state civil service, and in the private sector by earnings levels and hours of work (defined as hours actually worked or hours paid for), classified by: (1) branch of economic activity; (2) occupation or occupational group or level of education/qualification; (3) seniority; (4) age group; (5) number of hours actually worked or paid for; and, where relevant, by (6) size of enterprise and (7) geographical area; and

(ii) statistical data on the composition of earnings (indicating the nature of earnings, such as basic, ordinary or minimum wage or salary, premium pay for overtime and shift differentials, allowances, bonuses and gratuities, and remuneration for time not worked) and hours of work (defined as hours actually worked or paid for), classified according to the same variables as the distribution of employees (subparagraphs (1) to (7) of paragraph (i) above).

Where feasible, statistics on average earnings should be compiled according to hours actually worked or paid for, with an indication of the concept of hours of work used. Where earnings data are compiled on a different basis (e.g. earnings per week or per month), the statistics on the average number of hours of work should refer to the same time period (that is, by week or by month).

The Committee understands that some governments are not yet in a position to provide full statistical information in response to the Committee's request. With respect to those countries, the Committee asks them to supply all the information that is currently available to them and to continue to work towards the compilation of the statistical information set out above.

Afghanistan (ratification: 1969)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

> 1. The Committee observes that the application of this Convention is linked inextricably with women's right to equality of opportunity and treatment in employment more generally. In this connection, the Committee refers to its observation under Convention No. 111, which should be read together with this observation.
>
> 2. The Committee notes the information provided in the Government's reports, which were received on 26 June and 8 July 1996, respectively, including the information provided by the Government concerning the criteria used to classify civil servants and workers, and that concerning the determination of additional remuneration, such as overtime pay, travelling expenses, pension rights, food, and consumer goods.
>
> 3. In its previous comment, the Committee noted the Government's reliance on section 9 of the Labour Code (which stipulates "equal wages for equal work"), whereas the Convention encompasses the broader principle of equal remuneration for work of equal value. Observing that the Government's reports continue to deny any discrimination in the terms and conditions of employment of men and women and refer to section 75 of the Code (containing the criteria for wage determination) without demonstrating how the broader concept is applied, the Committee asked the Government to consider amending the Labour Code so as to reflect fully the principle of the Convention. In its report the Government states that, on the instruction of the competent authorities, the Labour Code is to be amended, and that in any such amendments, the matters raised by the Committee will be taken into consideration and will be reported to the Office. The Committee hopes that the necessary action will be taken to amend the Labour Code in line with the scope of the Convention and asks the Government to provide information on further developments.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Angola (ratification: 1976)

The Committee notes with regret that the Government's report fails to respond to the Committee's previous direct requests. The Committee urges the Government to supply the information requested and hopes that the Government will make every effort to take the necessary action in the near future.

Barbados (ratification: 1974)

Further to its previous observations concerning differentials in the wages paid to women and men in the sugar industry, the Committee notes with satisfaction the information provided by the Barbados Workers' Union on the job evaluation exercise carried out in the sugar industry, which has resulted in the removal of pay differentials based on sex, in conformity with the Convention.

The Committee is raising other points in a request addressed directly to the Government.

Benin (ratification: 1968)

With reference to its previous comments on the determination of wages, the Committee notes with satisfaction the adoption of Act No. 98-004 of 27 January 1998, which promulgated the Labour Code of the Republic of Benin. Section 208 of the Code is worded in accordance with the terms of the Convention: "For work of equal value, the wage shall be equal for all workers irrespective of their origin, sex, age, status and religion, under the conditions set out in the present Code."

The Committee is raising other matters in a request addressed directly to the Government.

Canada (ratification: 1972)

The Committee notes the detailed information provided in the Government's report and the attached documentation.

Article 1 of the Convention. Quebec. The Committee notes with interest the adoption of the Pay Equity Act of 21 November 1996 and the Regulation respecting the content and form of the report relating to pay equity or pay relativity plans completed or in progress on 21 November 1996. It notes that the Act applies to both the public and private sector and is designed to eliminate the salary gap due to systemic gender discrimination suffered by persons who occupy positions in predominately female jobs. The Act requires employers, who employ more than ten but fewer than 50 employees, to determine the adjustments in compensation necessary to afford the same remuneration, for work of equal value, to employees holding positions in predominantly female job classes as compared to employees holding positions in predominantly male job classes (section 34). Employers with more than 50 employees are required to establish a pay equity plan (section 31), to be in place within a time-limit of four years. For enterprises employing 100 or more employees, employers have to set up a pay equity committee (section 16); bipartite sector-based committees may be set up to facilitate the establishment of pay equity plans in a particular sector (Chapter III). The Committee further notes that pay equity plans must be developed in four stages: (1) identification of predominantly female and predominantly male job classes; (2) description of the job evaluation method and instruments; (3) the job evaluation exercise and determination of the necessary adjustments in compensation; and (4) determination of the terms and conditions of payment. In case new jobs are created or collective agreements renewed, pay equity must be maintained in the enterprise. Chapter V, Division I, of the Act establishes a "Commission on Pay Equity" which has a monitoring, advisory, research, promotional and regulatory role. It may receive complaints and carry out non-advisory investigations either on its own initiative or following a dispute or a complaint concerning matters of pay equity (Chapter VI, Division I). The Commission on Pay Equity is also authorized to resolve any questions concerning pay equity between a predominantly female job class and a predominantly male job class in enterprises employing fewer than ten employees in accordance with section

19 of the Charter on Human Rights and Freedoms, which has been amended accordingly (section 93(7) and Chapter X).

The Committee is raising other points in a request addressed directly to the Government.

Chad (ratification: 1966)

The Committee notes with interest the adoption, by Act No. 038/PR/96 of 11 December 1996, of a new Labour Code, sections 246 and 247 of which set out the principle of equal remuneration in accordance with the Convention. Under the terms of section 246 of the Labour Code, "all employers are bound to ensure, for the same work or for work of equal value, equal remuneration for employees, irrespective of their origin, nationality, sex and age, under the conditions provided for in the present Title" and a definition is provided of remuneration in terms which are identical to those of *Article 1(a) of the Convention*. Section 247 states that the various components of remuneration must be established according to identical standards for men and for women, that professional categories and classifications and the criteria for promotion must be common to workers of both sexes, and that methods for the evaluation of jobs must be based on objective and identical criteria, based essentially on the nature of the work involved in the jobs. This provision is in accordance with *Article 3, paragraph 1*, of the Convention.

The Committee is addressing a request directly to the Government on other matters.

Djibouti (ratification: 1978)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

> The Committee notes that the Government's report does not contain any new information in reply to previous direct requests, and must therefore reiterate the questions in a new direct request. It hopes that the Government will not fail to take the necessary measures and to provide the information requested.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Ecuador (ratification: 1957)

The Committee notes with satisfaction the promulgation of article 36 of the new Political Constitution of Ecuador, enacted on 10 August 1998, which reflects the principle set forth in *Article 1 of the Convention*. Article 36 provides, in pertinent part, that:

> The State will promote the incorporation of women into the paid labour force under conditions of equal rights and opportunities, guaranteeing women equal remuneration for work of equal value.

The Government's report indicates that article 36 of the new Ecuadorean Constitution constitutes primary law, and cites the well-established principle of legal interpretation that a primary law supplements any deficiencies or omissions in a secondary law, such as section 79 of the Labour Code, to which the Committee has made reference for a number of years. The Committee asks the Government to indicate whether it contemplates amending section 79 of the Code to bring it into conformity with constitutional article 36.

The Committee also notes with interest that under constitutional article 36 the Government undertakes to promote respect for women's employment and reproductive rights in order to improve working conditions for women and ensure their access to social security systems, particularly in the case of expectant and nursing mothers, working women, women working in the informal and handcrafts sectors, female heads of households and widows. Article 36 expressly prohibits all forms of employment discrimination against women and recognizes unpaid domestic work as productive labour.

The Committee is addressing a request directly to the Government on other matters.

Finland (ratification: 1963)

The Committee notes the detailed information provided by the Government in its report as well as the comments from the Central Organization of Finnish Trade Unions (SAK), the Finnish Confederation of Salaried Employees (STTK), the Confederation of Unions for Academic Professionals in Finland (AKAVA), and the Commission for Local Authority Employers (KT).

1. The Government states that in 1997, women's total average earnings in the public and private sectors combined constituted 79.2 per cent of men's corresponding average earnings, representing an increase from 1994 of 4.5 per cent. The figures reported also reveal sectorial differences in whether the pay gap has widened or narrowed between men and women over the last few years. These sectorial differences are further borne out by the comments of AKAVA which reports a widening of the gender wage gap, stating that the pay of all AKAVA-affiliated women in full-time employment was 76 per cent of men's in 1995; in 1997, the corresponding figure was 74 per cent. From a more long-term perspective, KT states that earnings differentials between men and women workers have decreased since the 1970s. SAK indicates that pay differentials between men and women workers have remained unchanged in the 1980s and 1990s, although there have been changes in the pay structure as Finland moves from merely work-based pay to a pay based on competence and performance.

2. With respect to the reasons for the wage differentials, the Government indicates that these differentials are affected by numerous factors simultaneously, including occupational segregation as well as spending cuts made in the public sector during the recent recession. Reference is also made to changes in the unemployment rate for men and women and the differential impact the recent economic growth has had on men and women which affects their remuneration levels. AKAVA considers that the employer's sector and sphere of operations, the post concerned, and the employee's years of experience are all factors which contribute to this situation. AKAVA points out that pay differentials are smaller in the state administration than in the municipal sector, although it maintains that the widespread use of fixed-term employment relationships may weaken the standing of trained women in the state administration in the long run. The KT attributes the continued differentials to a gender-separated labour market, training, the age structure and the amount of overtime worked by men and women workers.

3. The Committee notes from the Government's report that the conclusions of the study commissioned by the Equality Ombudsman on the pay differentials between men and women from an economic point of view found that the adoption of legislation on equal pay was insufficient to reduce the pay differentials and that active measures were required, such as the introduction of effective equality programmes. Measures to facilitate work and family responsibility were found to have a limited effect on reducing the pay gap as long as men do not take up the opportunities to use these measures along with women. The study also concluded that the negotiating power of women was viewed as a vital element in further reducing the pay differential. The Committee would be grateful if the Government would continue to provide information on the progress of efforts taken to reduce the wage gap and combat occupational segregation in both the public and private

sectors. Please provide, in particular, information on active measures such as the equality programmes referenced in the Government's report and initiatives in the areas of education, vocational training and occupational guidance aimed at reducing pay differentials.

4. The Government states that, in the commercial sector, increment levels for part-time employees governed by collective agreements were changed at the beginning of 1998 and that the new regulations permit part-time employees to accumulate years of service and move into correspondingly higher pay grades, in the same manner as full-time employees. The Government indicates that this legislative change will improve the earnings level of the large majority of women part-time workers in the commercial sector. The Committee notes this information with interest and requests the Government to provide copies of the relevant regulations and to supply information on the impact of the regulations on the gender pay gap.

5. The Committee notes with interest that the collective agreement for 1998-99, concluded on 12 December 1997, provides for the payment of equality allowances to be shared out as agreed by the unions involved. The STTK reports that it has received positive feedback from member unions on the manner in which equality and low-income allowances have been shared out. The Government further indicates that preparations are under way for collective agreements on new pay systems in numerous sectors of the public administration, covering 80 per cent of all state personnel. In relation to the monitoring of collective agreements, the STTK points out the difficulty it has due to the limited access the shop stewards have to pay information. It states, however, that other approaches to equal pay are also needed, including a reform of pay systems through the development and introduction of job demand evaluation tools, as well as by making workplace equality planning more effective. The Committee expresses its hope that the Government will continue to supply information on new developments in this area, and requests the Government to provide a copy of the interim report compiled by State contracting parties, focusing on the link between job demands and pay as well as between gender and pay.

6. The Government indicates that the collective agreement mentioned above stipulates that the central labour market organizations' working group shall continue its work, which includes promoting and monitoring the development and introduction of job evaluation systems and issuing statements and opinions on evaluation at the request of the social partners, the Equality Ombudsman and the unions. The Government is asked to provide a copy of the handbook on job evaluation published by the working group, as this annex was not received with the report. The Government is also asked to continue to provide information on the ongoing activities of the working group, including copies of any reports issued by the group on job evaluation systems and trends in equal pay.

7. The Committee notes the information contained in the Government's report concerning the annual workplace equality plans formulated by employers under the 1995 amendments to the Equality Act. The Government states that some equality plans call for the creation of pay systems built on job evaluations as a means to achieve greater pay equality. Other plans require pay analyses to be carried out at regular intervals to permit pay discrimination to be identified and corrected, while others view a reallocation and reorganization of work as one method of promoting equal pay. The Committee would be grateful if the Government would provide a copy of the 1996 materials issued by the Equality Ombudsman providing employers with guidelines and instructions on how to comply with their equal pay duties. In addition, the Government is requested to provide information on the surveys conducted by the Ombudsman on workplace equality planning.

8. The Committee notes the information provided by the Government with regard to the equal pay complaints received by the Equality Ombudsman. The Committee hopes that the Government will continue to provide information on the Ombudsman's activities relevant to the investigation and resolution of equal pay complaints, including the manner in which the Ombudsman's decisions are implemented.

Germany (ratification: 1956)

The Committee notes the information provided by the Government in its report.

1. The Committee notes from the statistics provided that there remains a marked, and only slightly improved, difference between male and female representation in the workforce of the producing industries, especially in the categories of skilled and unskilled work. The figures reflect that, in 1997, 60.1 per cent of males in the workforce were in the skilled work category in the old federal states, as compared with 9.6 per cent of females in the workforce. In contrast, 9.8 per cent of males in the workforce were in the unskilled work category of the old federal states as compared with 47.6 per cent of females in the workforce. The statistics also show that a wage gap between men and women within these different categories continues to exist. In this respect, the Committee requests the Government to provide information on what measures are being taken or contemplated to bring about a more balanced representation of males and females in the skilled and unskilled categories of the producing industries. It also requests information on measures taken to reduce the wage gap, including, for example, measures to improve the skill levels of women, and to ensure that jobs are evaluated on the basis of objective criteria that reflect the types of work women do as well as the types of work men do.

2. With reference to its previous comments concerning the continued inclusion of wage categories for light physical tasks in a number of collective agreements, the Committee notes the Government's indication that the 11th report on the matter was to be submitted to the German Federal Parliament in November 1998. The Committee notes from the Government's report that 26 collective agreements still contain "light wage categories", one less than during the previous period scrutinized, and that, between 1990 and 1995, the number of women in "light wage categories" was reduced by almost half, while the number of men increased by over 60 per cent. The Committee also notes the view, long maintained by the federal Government, that the mere existence of "light wage categories" in certain collective agreements is no indication of whether or not women's work is actually undervalued and that this is demonstrated by the fact that not only women, but to an increasing extent, men are placed in these categories. It also states that, with just a little less than 0.5 per cent of workers of both sexes in the processing industries, only a very small proportion of workers are affected.

3. The Committee recalls that it had previously noted that the most recent jurisprudence of the Federal Labour Court ensures that a higher classification can be obtained for jobs which, while physically lighter, involve mental and nervous strain; and that the category of "physically arduous work", which is better paid, also includes jobs which involve not only muscular but other strain on human beings which can result in physical reactions. Noting the Government's statement that the German Federal Parliament and the federal Government hold the continued view that the parties to collective agreements should continue to endeavour to improve the classification criteria of unskilled activities in their collective agreements, which, almost without exception, are geared to physical strain, the Committee again expresses the hope that the Government will pursue more specific and proactive measures to encourage the social partners to take

account of such rulings. It hopes to receive information in this connection in the Government's next report.

Guinea-Bissau (ratification: 1977)

The Committee notes with regret that the Government's report has not been received. It recalls that for a number of years the Government has either not submitted a report or the report has not replied to previous direct requests.

The Committee must therefore return to the question in a new direct request. It hopes that the Government will take the necessary steps and supply the information requested.

Guyana (ratification: 1975)

The Committee notes with interest the adoption of the Prevention of Discrimination Act, No. 26 of 1997, which applies to both the private and public sectors. It notes that section 9 of the Act imposes the obligation on every employer, or person acting on behalf of such employer, to pay equal remuneration to men and women performing work of equal value. Section 2 defines equal remuneration as the rates of remuneration that have been established without differentiation based on the grounds of sex and defines work of equal value in terms of the demands it makes in relation to such matters as skill levels, duties, physical and mental efforts, responsibility and conditions of work. The Committee also notes with interest that section 2(o) of the Act defines "remuneration" in broad terms, as required in *Article 1 of the Convention*, and that section 9, paragraph 3, places the burden of proof for establishing that equal remuneration has been paid on the employer.

The Committee is raising other points in a request addressed directly to the Government.

India (ratification: 1958)

The Committee notes the information contained in the Government's report as well as the comments from the Centre of Indian Trade Unions (CITU).

1. While the Government indicates that the Equal Remuneration Act of 1976 is being enforced with complete earnestness, the CITU maintains that the enforcement machinery is not functioning effectively and that neither the Convention nor the Equal Remuneration Act is being properly applied. Asserting that inequality of remuneration persists, the CITU points out that the Convention and the Act are applied to the industries in the public sector, but that they are not applied to all of the industries in the formal or informal sector, including the construction and beedi industries. The CITU also comments on the need to monitor the situation of the many women employed in the home-based industries, stating that neither the Convention nor the Act is being applied to women employed in export processing zones, particularly in the garment industry. Further, the CITU suggests that the Equal Remuneration Committee, to which it has submitted concerns in the past, is no longer operational. The Committee notes these indications. It has long emphasized the need to secure effective enforcement of the Convention and the Equal Remuneration Act of 1976, both at the central government level and throughout the states and union territories. In this respect, the Committee notes that, according to the figures contained in the Government's report, a large number of inspections have been carried out to detect violations of the Act. The report indicates that, in 1995, the states and union territories conducted 37,323 equal pay inspections and identified 5,543 violations. The central Government conducted 4,367 equal pay inspections in 1995, finding 4,359

violations. It carried out 4,468 inspections in 1996, detecting 4,373 equal pay violations. The Committee requests the Government to continue to provide detailed information, by sector, if possible, on the inspections carried out in enforcing India's equal pay legislation, and the manner in which violations of the Act are remedied. It also requests the Government to indicate the operational status and activities of the Equal Remuneration Committee.

2. For some years, the Committee has expressed its concerns regarding the narrow scope of section 4 of the Act, which requires employers to pay equal remuneration to men and women workers for the same work or work of a similar nature. The Committee has referred the Government to the language of the Convention, which calls for equal remuneration for men and women workers to be established "for work of equal value," thus going beyond a reference to the "same" or "similar" work, choosing instead the "value" of the work as the point of comparison. This basis of comparison is intended to reach discrimination which may arise out of the existence of occupational categories and jobs reserved for women and is aimed at eliminating inequality of remuneration in female-dominated sectors, where jobs traditionally considered as "feminine" may be undervalued due to sex stereotyping.

The Government indicates that the scope of section 4 of the Equal Remuneration Act has been sufficiently widened through judicial pronouncements, citing the Supreme Court's decision in *MacKinnon MacKenzie & Co., Ltd.* v. *Audrey D'Costa and Another*. The Committee notes, however, that the *MacKinnon* decision did not expand the scope of the Equal Remuneration Act to bring it into alignment with the Convention. While the *MacKinnon* decision makes reference to the Convention, the Supreme Court's decision was predicated solely on the language of the Act; the Supreme Court nonetheless held that a broad view should be taken in deciding whether the work is the same or broadly similar. The Court stated that the concept of similar work implies differences in details, but emphasized that these details should not defeat a claim for equality on trivial grounds. In this context, the Court proposed that job evaluations should be conducted and that the jobs performed by men and women should be compared, looking at the duties actually performed. In light of the *Mackinnon* decision, the Committee therefore again recommends that section 4 of the Equal Remuneration Act be modified to expand its scope, giving legislative expression to the principle of equal remuneration for men and women workers for work of equal value.

3. The Committee notes with interest the list of social welfare organizations recognized by the States of Andhra Pradesh, Maharashtra, Daman and Diu under section 12(2) of the Equal Remuneration (Amendment) Act, 1987. The Government is asked to indicate what efforts are being made to encourage other state governments and union territories to authorize social welfare organizations to bring equal pay complaints under section 12(2). With respect to the organizations recognized by the central and state governments, please indicate the number of equal pay complaints brought by said organizations and the outcome of such complaints.

4. The Committee notes that the Government's report contains no data reflecting the average earnings of men and women workers in India. The Government is asked to provide the statistical information requested in the general observation on this Convention with its next report, in order to permit an evaluation of the progress made in the application of the Convention.

5. The Committee notes that the Government has indicated that it would like to receive an expert team from ILO headquarters in the near future with a view to continuing its dialogue with the Office and also to enrich its knowledge in connection with the

Convention. The Committee is informed that the Office will respond positively to this request.

Japan (ratification: 1967)

1. The Committee notes the information in the Government's report and the attached documentation including the comments of 6 October 1998 received from the Japanese Trade Unions Confederation (JTUC-RENGO). It further notes the reply of the Government to the comments of JTUC-RENGO. The Committee also notes the communications of 6 August 1998 and 26 November 1998 received from the Japan National Hospital Workers' Union concerning the application of the Convention in Japan. These comments have been sent to the Government for any observations it may wish to make.

2. For a number of years now, the Committee has encouraged the Government to take measures consistent with the Convention in order to reduce the high wage differential in the average earnings of men and women, a differential which is more pronounced in older workers. According to the Government's reply to the comments of JTUC-RENGO on the persistence of the wage gap between men and women in Japan, 1997 figures show that the wage differential (51.1 per cent) of the average total monthly earnings of men and women in establishments with more than 30 employees had not been reduced during the last few years. Both the Government and JTUC-RENGO attribute this to an increase in part-time workers, who are mostly women. They point out that some progress in closing the gap could be marked if part-time workers were excluded from consideration.

3. With reference to its previous observation in which the Committee noted that the concentration of women in lower-paid jobs and their lack of equal opportunities appeared to be primary causes of the existing wage differential in Japan, the Committee notes with interest the adoption of the Act on Securing Equal Opportunity and Treatment between Men and Women in Employment. The Act will enter into force in April 1999 and has the aim of strengthening the Equal Employment Opportunity Act. The Committee notes that the Act prohibits discrimination against female workers by employers in recruitment and hiring (section 5), assignment, promotion and training (section 6), fringe benefits (section 7), mandatory retirement age, retirement and dismissal (section 8) and sexual harassment (section 21). It also notes that the Act contains provisions concerning settlement of disputes and provides for the possibility of government assistance for employers that seek to promote equal opportunity. The Committee also notes the Government's indication that restrictions on overtime and night work by women as well as work during holidays, contained in the Labour Standards Act, have been abolished to expand employment opportunities of women and promote equal treatment.

4. With reference to its previous comments concerning the existence of the two-track career system and the participation rate of women in fast-track career development jobs, the Committee recalls that a 1992 survey indicated that, of the enterprises that use a multiple-track career development system, 35.4 per cent hire both men and women for the fast track, while the remaining 64.6 per cent hire men only. A similar survey undertaken in 1995 indicates that the percentage is down 7.8 points to 27.6 per cent that hire both men and women. The Government reports that under the career-tracking system, workers should be hired into tracks based on the content of the job and that assignment, promotion and training opportunities differ, depending on the track, being greater in the fast track. While noting that if operated properly the track system should not lead to discrimination against women, the Government acknowledges that some companies operate the career-tracking system in a manner that discriminates against women by hiring

only or mainly men for the fast track. The Committee thus notes with interest that the detailed guidelines, developed pursuant to the new Equality Act, characterize as measures falling under the prohibition of discrimination, recruitment of men only for fast-track career development jobs *(sogoshoku)* and women only for regular office jobs *(ippanshoku)* (paragraphs 2(a)(2) and (f)(2)). It also notes the Government's indication that, in 1991, it adopted standards containing the "Proper approach to career tracking in employment management". The Committee requests the Government to continue to provide it with data on the operation of the career tracking system and the measures taken to ensure that all the tracks are open to women on the same basis as they are open to men in practice as well as in law.

5. Further to its previous observation that the seniority wage system also appeared to be a primary cause for the existing wage differential, the Committee notes the Government's indication that it is actively promoting various measures to harmonize working life with family life, such as the establishment of a child care leave system and a family care leave system, so as to address the effects of difference in length of service between men and women on equal remuneration (see also under the Workers with Family Responsibilities Convention, 1981 (No. 156), ratified by Japan). The Committee also notes the decision handed down in the Shiba Shinkin Bank case whereby the court found that, in spite of their eligibility under an automatic seniority-based promotion system, the defendant had failed to promote women, and subsequently ordered the defendant to accord eligible women their promotion and corresponding pay. The Committee notes in this respect that this case constitutes an example of difference in treatment within a seniority wage system and thus does not impact on the seniority wage system itself. In this respect, the Committee once again requests the Government to indicate whether it is considering a reform of the wage system to change the basis from seniority to job content.

6. The Committee notes that the guidelines issued pursuant to the new Equality Act provide detailed explanations on how employers are to deal properly with recruitment, hiring, job assignment, promotion and training. They also include examples of action that would contravene the Act, such as hiring only men or women for certain jobs, including part-time jobs (paragraphs 2(a)(1) and (4) and 2(f)(1) and (4)), using job titles referring only to men or women (paragraphs 2(a)(5) and 2(f)(5)), and referring to specific qualifications which limit those to be recruited only to men or women (paragraphs 2(a)(3) and 2(f)(3)). The Committee requests the Government to provide information on the judicial enforcement of the Act, including the guidelines, especially in cases where the settlement schemes do not lead to a mutually satisfactory outcome.

7. In its comments, JTUC-RENGO provides an overview of efforts it has made to improve the wage differential within the framework of collective bargaining negotiations. The Committee notes this information and would be grateful to continue to be kept informed of the measures taken by the Government to engage the cooperation of the social partners in promoting equal remuneration between men and women for work of equal value.

Madagascar (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the observations from the Union of Commercial On-Board Staff of AIR MADAGASCAR sent to the Government by letters of 23 January and 4 March 1996. These observations concern the unequal remuneration arising from the difference in the age of retirement between male and female on-board staff, which is set at 50 years for men and

45 years for women by regulation 12 of the 1994 Regulations respecting the conditions of work and remuneration of AIR MADAGASCAR commercial on-board staff.

The Committee hopes that the Government will send its comments on the issues raised in the observations so that it may examine them at its next session.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

The Committee is addressing a direct request to the Government concerning other points.

Morocco (ratification: 1979)

The Committee notes the information contained in the Government's report.

1. The Committee reiterates its comments concerning the Labour Code which, under section 301 (in conjunction with section 7), requires equal working conditions, occupational qualifications and output for the purposes of applying the principle of equal remuneration without discrimination on grounds, inter alia, of sex. The Committee had noted that the application of section 301 appears to be more limited than that of the Convention, under the terms of which men and women workers should receive equal remuneration for work of equal value. The Committee notes the Government's statement to the effect that the Committee's comments shall be taken into consideration at the time the definitive version of the Labour Code Bill, which is being examined by the Prime Minister's office, is drawn up. The Committee reiterates the hope that the new Labour Code will guarantee equal remuneration for men and women workers in all cases, including equal remuneration for work performed which is different but of equal value, and again requests the Government to keep it informed of any progress made in the adoption of the new Labour Code.

2. The Committee notes the Government's statement to the effect that the national legislation in force does not provide for an objective system of evaluation and that the Government had not considered it necessary to adopt such measures since the competent authorities have not received any request in respect of the manner in which the principle of equal remuneration for work of equal value is applied in practice or of the measures taken in this regard. Moreover, the Government emphasizes that, in the absence of specific comments concerning the types of possible abuse in this area, it is difficult to define the practical criteria to be applied when appraising jobs on the basis of the work to be performed. The Committee wishes to draw the Government's attention to the need to employ a methodology which would enable the objective and analytical appraisal and comparison of the relative values of the work performed. The concept of work of equal value logically implies a comparison of tasks and the adoption of a technique and appropriate procedures to ensure an evaluation without discrimination based on sex. The Government may wish to refer to paragraphs 52 to 65 and paragraphs 138 to 152 of the General Survey of 1986 on equal remuneration in this respect. The Committee also notes that the Government envisages applying the principle of equal remuneration on the basis of job appraisals, and notes the measures to be adopted by the Government, including the organization of a seminar in this regard with the cooperation of the ILO. The Committee requests the Government to inform it of any progress in this respect.

3. In response to the question raised in its previous comment concerning the high number of female employees in certain jobs in the public administration, the Government states that all categories are legally open to candidates of both sexes without any discrimination whatsoever. The Government also states that, in the public service,

additional emoluments to which public servants are entitled over and above their basic salary are determined for each occupational category without any discrimination whatsoever. However, it is necessary to ensure that the principle of equal remuneration is also guaranteed in practice. The statistical data appended to the report, detailing the number of female employees and the overall number of employees within each occupational category to 31 December 1995, indicate that inequality in a large number of occupational categories continues to exist. The Committee notes that the Government does not provide a specific response to the Committee's previous observation in which the Committee requested the Government to indicate the measures taken or envisaged to increase the number of women in supervisory and managerial positions in the public service, taking into consideration the fact that the number of women in these positions, although increasing, remains relatively low. Consequently, the Committee again requests the Government to continue its efforts to implement specific measures to encourage the recruitment of women into all categories of the public service, and to provide information in this respect as well as statistical data to enable an assessment of the results obtained.

4. *Private sector.* The Committee hopes that the results of the survey on wages and working hours, together with the statistical data requested in respect of average earnings for men and women by occupation, branch of activity, seniority and skills levels, and the corresponding percentage of women employed at the different levels are transmitted as soon as they become available, as indicated by the Government in its report.

5. Finally, the Committee notes that the Government's report does not respond to the comments made in the Committee's previous direct request and hopes that the Government will make every effort to provide the information requested in its next report.

A request regarding certain points is being addressed directly to the Government.

Nepal (ratification: 1976)

1. The Committee notes the statement in the Government's report that with the fixing of the new minimum wage, and the commitment of the Nepal Ministry of Labour to ensure its effective implementation, discrimination between men and women with regard to remuneration no longer exists in establishments covered by labour legislation, including the plantation sector. The Committee also notes the comments of the General Federation of Nepalese Trade Unions (GEFONT), sent to the Government by a letter of 29 August 1998, stating that wage discrimination between men and women still exists in tea plantations, government-run agricultural farms, carpet industries and some of the garment and manufacturing establishments.

2. In previous observations, the Committee had expressed concern about wage discrimination between men and women, particularly in relation to the exemption (granted to employers in tea plantations) from paying women workers equal remuneration. It had reiterated that any scheme which denies women the basic human right of equal pay is a violation of the Convention, as well as the national constitutional and legal provisions. This view was also shared by the Conference Committee in the conclusion of its June 1997 discussion. Moreover, the Committee had suggested that if measures were needed to encourage the development of tea plantations and to encourage women's employment in that sector, the Government should explore the introduction of other non-discriminatory measures, such as granting special tax relief to employers.

3. While noting the assurances of the Government in its most recent report, the Committee remains concerned that the Government has not referred, in either the Conference Committee or in its reports, to any measures taken to remove the exemption which allows employers in tea plantations to pay lower wage rates to women workers. The

Committee must once again call upon the Government to supply more detailed substantiation (such as studies, surveys, statistics, administrative decisions) in its next report on the measures taken to ensure that no more exceptions to the equal pay provisions are granted to employers in the tea plantation sector, and that women's pay in private, as well as public, tea plantations is brought into line with that of men in accordance with the national constitutional and legal provisions, and the Convention. It also requests the Government to provide information on measures taken to ensure that equal remuneration is paid to women and men in government-run agricultural farms, carpet industries and garment and manufacturing establishments, and to supply relevant statistics on the tea plantations as well as these other sectors in accordance with the general observation being made on this Convention at the present session.

4. The Committee further notes the statement in GEFONT's comment that Metropolis KMC is still discriminating between men and women in wages, incentives and benefits, such as in providing NRs.800 to male garbage cleaners and only NRs.150 to female workers to buy their aprons. The Committee observes that remuneration under the Convention includes benefits in kind such as the allotment and laundering of working clothes, and that any differences in payments or allotments should not be based on the sex of the worker. The Committee hopes that in future the Government will be in a position to provide information on this issue raised by GEFONT and on any measures taken to ensure the application of the principle of equal remuneration in the Convention to all employment-related benefits including allowances.

5. Once again, the Committee requests the Government to furnish copies of all documents pertaining to the new tripartite wage-fixing committee, including any rules, orders or administrative instructions concerning wages, together with copies of the specific instrument fixing the minimum wage in tea plantations. In addition, the Committee asks the Government to forward copies of the studies and surveys that, according to the information provided by the Government to the Conference Committee in 1997, had been undertaken to ascertain whether wage discrimination based on sex existed in privately owned tea plantations.

6. In previous observations, the Committee has sought information on the means by which the principle of equal remuneration for work of equal value is applied in situations where women and men carry out different work noting, in this connection, that article 11(5) of the 1990 Constitution proscribes discrimination between men and women in regard to remuneration only "for the same work". Section 11 of the 1993 Labour Rules — which provides that "In the event that male or female workers or employees are engaged in work of the same nature in an establishment, they shall be paid equal remuneration without any discrimination ..." — is also a narrower formulation of the principle of equal pay than that required by the Convention. The Committee pointed out that the principle of the Convention is intended to cover not only those cases where men and women undertake the same or similar work, but also the more usual situation where they carry out different work. In order to determine pay structures, the Committee pointed out that the requirements of the different work carried out by men and women should be evaluated in a gender-neutral manner on the basis of objective criteria that take adequate account of the various aspects of men's and women's work. As the Government has provided no information in this regard, either in the Conference Committee or in any of its reports, the Committee must once again express the hope that the Government will address this matter, in line with the recommendations contained in the report of the ILO advisory mission on wage fixing and equal pay (presented to the Government in 1993), and that its next report will contain detailed information on the measures taken.

New Zealand (ratification: 1983)

The Committee notes the detailed information supplied by the Government in its report and attached documentation. The Committee also notes the comments of the New Zealand Employers' Federation (NZEF) and the New Zealand Council of Trade Unions (NZCTU), as well as the Government's response to those comments.

1. *Legislative protection*. The Committee notes that the pay gap has not narrowed since 1994 (see paragraph 8 for discussion on pay gap). In its report, the Government acknowledges that the problem of earnings differentials between men and women cannot be addressed simply by legislative prescription, but requires a wide range of positive activities which impact on the attitudes and behaviour of society as a whole. It is the Committee's view that, for progress to be made in the promotion of this Convention, it is essential that a comprehensive approach be taken to ensuring and promoting equality of opportunity and treatment in a wider context. It thus notes with interest the references in the Government's report to various initiatives it has undertaken to promote the principles of equal remuneration and equal employment opportunity, to increase the participation of women in the workforce and to reduce occupational segregation. The Committee nevertheless points out that, where legislation forms part of a comprehensive approach toward the elimination of gender-based salary discrimination, it is crucial that such legislation be effective and ensure the application of the principle of equal remuneration for men and women workers for work of equal value, within the meaning of *Article 1 of the Convention*.

2. In its comments, the New Zealand Council of Trade Unions (NZCTU) points to a constellation of factors which, it believes, renders the legislative framework ineffective and inadequate. The NZCTU indicates that the Equal Pay Act 1972 (EPA), the Employment Contracts Act 1991 (ECA) and the Human Rights Act 1993 (HRA) do not comply with the requirements of the Convention in that they fail to recognize the concept of equal pay for work of equal value; they provide no scope for cross-contractual complaints; and their application is limited to cases where employees work for the same employer. It refers to the 1986 Clerical Workers' Union decision, in which the New Zealand High Court interpreted the EPA narrowly, so that rates of pay under the Clerical Workers' Award could not be compared with rates under the Building Trades Award. According to the NZCTU, section 28 of the ECA codified the principle established in the Clerical Workers Union case that employees must hold "substantially similar" employment as a condition precedent to making an equal pay claim. The Committee notes that the HRA also reflects a "substantially similar" employment requirement in its definition of discrimination. It recalls that the 1994 Ministry of Women's Affairs Report on the Effectiveness of the Equal Pay Act raised similar concerns regarding limitations of the scope of the legislation.

3. The New Zealand Employers' Federation (NZEF), on the other hand, is of the view that the EPA is not too limited and that existing pay differentials are not based on gender. In its comments, the NZEF takes the position that the language of *Article 1(b)* of the Convention is not intended to permit broad wage comparisons and that allowing such comparisons would effectively amount to state intervention in the wage negotiation process. The NZEF posits that determining the value of work on an across-enterprise basis is a subjective process which can lead to distortions in wages and pay rates. For this reason, rates of remuneration in New Zealand are set for the individual enterprise and may vary based on individual ability or on the nature of the work.

4. The NZCTU maintains that the EPA has failed to redress pay discrimination in New Zealand, largely due to the impact of the ECA. It points out that, during the

implementation period of the EPA, the gender pay gap began to close, but that, since 1991, progress toward equal pay has plateaued. It recalls that the structure of the EPA was predicated upon the uniform pay system created by collective awards and agreements and that the enactment of the ECA has negatively impacted the position of women in the New Zealand labour market by its shift towards a multiplicity of individual contracts containing alternative pay systems. In contrast to the position taken by the NZEF, the NZCTU points out the potential for gender pay discrimination in both performance and competency-based pay systems.

5. The Government expresses its disagreement with the NZCTU's statements, indicating that the ECA has not marginalized the position of women in the labour market. It believes that the EPA and related legislation meet the requirements of the Convention. The Government points out that the EPA was amended in 1991 to reflect the new industrial relations framework heralded by the enactment of the ECA. The Government also states that cross-contractual complaints may in fact be brought under the EPA, the HRA and the ECA.

6. The Committee must recall that the principle of equal remuneration within the meaning of *Article 1* of the Convention refers to equal remuneration for *work of equal value*. As the Committee noted in its General Survey on equal remuneration, ILO, 1986, the ILO standards go beyond a reference to the "same" or "similar" work, choosing instead the "value" of the work as the point of comparison. (See 1986 General Survey, at paragraphs 19-23, 52-70 and 138-152.) With respect to the scope of comparison, the Committee reiterates its view that the reach of the comparison should be as wide as allowed by the level at which wage policies, systems and structures are coordinated, taking into account also the degree to which wages fixed independently in different enterprises may be based on common factors unrelated to sex (see 1986 General Survey at paragraph 72). The Committee expresses its hope that the equal remuneration legislation currently in force in New Zealand will be applied in such a manner as to give full effect to the provisions of the Convention and asks the Government to indicate the measures taken to ensure the observance and application in practice of the policy contained in *Article 2* of the Convention, such as the issuance of guidelines for use in job evaluations and contract negotiations. The Committee also requests the Government to indicate whether any judicial or administrative tribunals have interpreted the equal remuneration laws as permitting cross-contractual complaints and to provide copies of any such decisions.

7. *Complaint procedures and enforcement.* The NZTCU states that there are currently no effective remedies for equal pay violations in New Zealand. It refers to the low number of equal pay complaints brought in New Zealand, which suggests either that individuals know too little about their right to equal pay, or that pursuing available remedies for pay discrimination is simply too difficult. The NZCTU also expresses concern that the Labour Inspectorate, which received no equal pay complaints, is not playing an investigatory role. In the NZEF's view, current complaint procedures are entirely adequate to ensure that, where pay discrimination is claimed and is established, any genuine grievance can be properly addressed. The Government indicates that employees who feel they have been discriminated against in relation to their remuneration have access to three avenues for redress: (1) they may bring a personal grievance to the Employment Tribunal under the ECA; (2) they may make a complaint to the Human Rights Commission under the HRA; or (3) they may bring a complaint to the Labour Inspectorate, who may be able to resolve the situation informally, or through action in the Employment Tribunal under the EPA. The Government report refers to four equal pay complaints brought during the reporting period, out of a total of 54 complaints of sex

discrimination in employment. It also highlights the active information-providing role now played by the Labour Inspectorate as well as the establishment of the EEO (Equal Employment Opportunity) Trust and the EEO Contestable Fund. The Committee notes the educational element of the activities cited by the Government and their importance; however it must also emphasize the importance of effective enforcement mechanisms. It requests the Government to continue to supply information regarding equal pay complaints brought under the EPA, the HRA and the ECA. Noting the EEO Trust and the EEO Contestable Fund, the Government is asked to indicate what initiatives it has established to involve workers' organizations within the meaning of *Article 4* of the Convention.

8. *Size of pay gap*. The Government acknowledges in its report that the gender pay gap decreased over most of the 1984-94 period, but that no further narrowing of the gap has occurred since 1994. It indicates that factors related to women's lower participation in the workforce and their higher concentration in specific industries and occupations are key to understanding the problem of gender-related earnings differentials. Data provided by the Government from *Statistics*, New Zealand's quarterly employment survey, showed that the average hourly pay gap between males and females remained relatively constant at between 80.5 per cent and 81.5 per cent during the period from February 1996 to November 1997. Additional data supplied by the Government from *Statistics*, New Zealand's household economic survey, showed that the ratio of female to male earnings has fluctuated between 82.4 per cent and 87.5 per cent from 1994 to the present. The Government indicates that some of the reduction in the gender pay gap over the late 1980s and early 1990s was due to a convergence in the average productivity-related characteristics of male and female employees, as well as greater convergence in their educational qualifications, mean age and full-time/part-time mix. The Government states that the remaining part of the reduction in the pay gap is not presently well understood. It indicates that it is continuing its research into this problem and refers to further work being coordinated by the Ministry of Women's Affairs on the gender pay gap, employment and remuneration in home-care work and performance-related remuneration systems. The Committee would be grateful if the Government would provide copies of these studies as soon as they are available. Further, the Committee asks the Government to provide it with information on the outcome of its ongoing research into the interrelationships between worker characteristics and earnings, which it anticipates will contribute to a better understanding of the relationships between earnings, gender, and other worker characteristics.

Nigeria (ratification: 1974)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. In its previous comments, the Committee has observed that, since ratifying the Convention more than 20 years ago, the Government has not furnished information which provides an adequate basis for assessing the application of the Convention. For the most part, the Government's reports have contained the type of broad statement repeated in its latest brief report, indicating that the principle of the Convention is applied and that no contraventions of its practical application have been reported. As concerns the legislative framework, the Government has relied on the narrow formulation of equal pay for equal work, contained in article 17(3)(e) of the Constitution and on the provisions of the National Minimum Wage Act, 1981, which exclude a large section of the workforce from its scope (namely, workers in establishments employing fewer than 50 persons, part-time workers, workers paid on commission or on a piece-rate basis, seasonal workers in agriculture, workers in merchant shipping or civil aviation). While the Government indicated previously that the National

Labour Advisory Council was to review the coverage of the Act, no reference has been made to this matter in the Government's present report. Likewise, the Government has not provided sufficient information on the practical application of the Convention.

2. In its latest report, the Government states that sections 10 and 11 of the Wages Boards and Industrial Councils Act, 1990, deal extensively with the Convention. The Committee observes that this legislation has not been referred to previously by the Government. Moreover, as the Committee has not been able to locate a copy of the Act, it asks the Government to furnish the legislation and to provide information on its implementation. However, the Committee has located other recently-enacted legislation — the National Salaries and Wages Commission Decree (No. 99 of 1993) — which appears to be of significance to the application of the Convention, as it provides for the establishment of a commission with wide functions, inter alia: to advise the federal Government on national incomes policy; to encourage research on wages structure (including industrial, occupational and regional and any other similar factor, income distribution and household consumption patterns); to establish and run a data bank or other information centre relating to data on wages and prices or any other variable and for that purpose to collaborate with data collection agencies to design and develop an adequate information system; to examine, streamline and recommend salary scales applicable to each post in the public service; and to examine the salary structures in the public and private sectors and recommend a general wages framework with reasonable features which are in consonance with the national economy. The Committee requests the Government to provide information in its next report on the functioning of the Commission, particularly as concerns any progress being made to collect data that would illustrate the extent to which the Convention is being applied in practice. It also hopes that any review of salary structures in the public and private sectors will take account of the requirements of the Convention and asks the Government to indicate any progress made in this regard.

3. Recalling paragraph 253 of its 1986 General Survey on equal remuneration, the Committee observes that it is hard to accept statements suggesting that the application of the Convention has not given rise to difficulties or that full effect is given to it, without further details being provided. It therefore trusts that the Government will reply to the above requests for information with as much detail as possible. The Committee also reminds the Government that the Office may be called upon to provide advice and technical assistance concerning the application of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

The Committee is raising other points in a request directly addressing the Government.

Switzerland (ratification: 1972)

1. The Committee notes the results of the 1996 survey on wage structures, published in 1998 by the Federal Statistics Office, which show that in 1996 the wage gap between women and men has only slightly narrowed, particularly in the public service, and that women still earned an average of 23 per cent less than men (compared to 24 per cent in 1994) in the private sector, and 11 per cent less (compared to 14 per cent in 1994) in the public sector.

2. The Committee further notes with interest that the Federal Bureau on Equality between Men and Women has recently drawn up two instruments for objective job evaluation, notably the "Analytical Evaluation of Work according to Katz and Baitsch" (ABAKABA) and "Do I earn what I deserve?" (VIWIV) which are aimed at eliminating gender-bias and contributing to the introduction of a non-discriminatory wage system in enterprises, administrative departments and other organizations. Both instruments are intended for personnel managers, workers' and employers' organizations, judges,

counselling services, and conciliation offices. The Committee particularly notes that ABAKABA takes into consideration masculine and feminine characteristics and includes criteria such as repetitiveness and precision of movements, responsibility for the life of others, responsibility for the environment, the number of work interruptions (for example in secretarial and clerical work), empathy, and the ability to organize, which are usually linked to typical female occupations. In addition, the Committee notes that the VIWIV instrument aims to complement ABAKABA and allows workers to assess whether or not direct or indirect wage discrimination has taken place, including discrimination in the manner in which the evaluation of jobs has been executed, and discrimination resulting from the specific choice and unequal balance of criteria related to either typical female or male occupations in the job evaluation method used. The Committee encourages the Government to continue to promote the application of the above methods and to keep it informed on the progress made in its practical implementation by enterprises, the administrative departments and workers' and employers' organizations in wage determination and the results achieved in terms of reducing the wage gap.

3. The Committee notes with interest the ratification of the UN Convention on the Elimination of All Forms of Discrimination Against Women, which came into force on 26 April 1997.

4. The Committee raises points on other matters in a request addressed directly to the Government.

United Kingdom (ratification: 1971)

The Committee notes the information provided by the Government in its report.

1. The Committee notes the Government's reply concerning the previous comments of the Trades Union Congress (TUC) with regard to the wage gap in some occupational categories. The Government attributes this wage gap to the diversity of occupations within these occupational groupings and the differing distribution of males and females across these groups, suggesting that women tend to be employed more widely in the lower-paid jobs within these categories. The Committee, not being in a position to come to any conclusions on the basis of the information available to it, requests the Government to provide it with the more detailed statistics upon which the Government relies in making its statement. The Committee does note in this respect that, according to statistics provided by the Government, in 1997 women's average hourly earnings (excluding overtime), although having gradually increased over the past ten years, constituted only 80.2 per cent of men's earnings in Great Britain and 83.4 per cent of men's earnings in Northern Ireland, reflecting a decrease from 84.7 per cent in 1996.

2. The Committee notes the Government's indication that the findings of the 1995 Equal Opportunities Commission's (EOC) report on the effects of compulsory competitive tendering (CCT), on which the TUC bases its claim that this process had a negative impact on the wages of women, should be treated with caution since it is based on a relatively small sample which does not include all service sectors covered by the relevant CCT legislation. It also notes the Government's indication that it has made a commitment to abolish the CCT and replace it with a new duty on local authorities to secure "best value" across the range of their activities. In this respect, the Committee requests the Government to indicate the manner in which the Government's Best Value proposals take into account the findings of the 1995 Report of the Equal Opportunities Commission. It also requests the Government to provide it with a copy of the summary of the White Paper, *Modern Local Government — In Touch with the People*, which contains the Government's Best Value proposals.

3. The Committee recalls the comments of the TUC that the application of the lower earnings limit (LEL) for national insurance contributions has a discriminatory effect and adverse impact on women's pay, in part because they constitute the large majority of part-time workers. It notes the Government's response that, if the LEL were set at a lower rate, it would be possible for people to gain entitlement to a pension which would be higher than their earnings during their working life in return for small payments in contributions, and that this would impose an unacceptable burden on other contributors. In order to ascertain whether the LEL might have an indirect discriminatory effect, the Committee requests the Government to provide information on the total number and percentage of male and female part-time workers as well as on those whose earnings fall below the LEL. In this respect, the Committee would like to draw attention to *Article 8* of the Part-Time Work Convention, 1994 (No. 175) which stipulates that part-time workers whose hours of work or earnings are below specified thresholds may only be excluded from certain statutory security schemes or measures taken in certain fields if these thresholds are sufficiently low as not to exclude an unduly large percentage of part-time workers.

4. The Committee notes the Government's indication that it is committed to the introduction of a statutory national minimum wage which will apply to all workers, whether full or part time, permanent, temporary or casual. It notes the Government's statement that a minimum wage would contribute to easing pay inequalities which still remain between men and women, especially for part-time workers. The Committee notes that the Independent Low Pay Commission, set up by the Government to advise it on an initial rate and other related issues, presented its report and recommendations in May 1998, and that enforcement mechanisms are currently being developed with the priority aim being to encourage self-compliance. Noting that the National Minimum Wage Act received Royal Assent on 31 July 1998 and will be put before Parliament at the end of 1998, the Committee requests the Government to provide it with a copy of the Commission Report and the Act, as well as with information on the effectiveness of the new enforcement mechanisms. The Committee also requests the Government to clarify whether the introduction of a minimum wage will have implications for the application of the LEL.

5. The Committee notes with interest that the Code of Practice on Equal Pay, developed by the EOC, came into force in May 1997. It notes the Government's indication that the Code's goal is to serve as a tool to help employers bridge the pay gap by offering practical advice on ways to implement pay systems free of gender bias and that it can be quoted as evidence in any proceedings before industrial tribunals. It further notes that the Code provides information on the implications of the law for employers, and on some of the reasons and causes underlying sex discrimination in pay. Paragraph 21, for example, states that men and women tend to do different jobs or have different work patterns resulting in undervaluation of work performed by one sex, which, especially when reinforced by discriminatory recruitment, training, selection and promotion procedures, may restrict the range of work each sex performs, for example, by allocating the full-time, higher paid, bonus-earning jobs to men. The Code also contains recommendations for carrying out a review of pay systems on possible existing gender bias, as well as suggestions for employers with regard to the development of an equal pay policy. The Committee, considering that the Code seeks to reinforce the principle of equal pay for work of equal value contained in the relevant legislation, and noting the judicial decisions concerning equal pay attached to the Government's report, requests the Government to provide information on cases in which the Code has been used as evidence. It also requests

the Government to provide it with other information illustrating the application of the Code.

6. The Committee notes from the EOC report "Equality in the 21st Century: a New Approach," which forms the basis for a consultation on proposed legislative amendments to the Sex Discrimination Act, 1975 and the Equal Pay Act, 1970, that the EOC's main proposal is to replace the current laws by a single statute based on the principle of a fundamental right to equal treatment between men and women. The new statute, which would bring together all the relevant laws (including equal pay) from various sources and present them in an integrated and coherent way, would guarantee an individual freedom from discrimination on the grounds of sex, pregnancy, marital or family status, gender reassignment and sexual orientation. The Committee notes with interest the emphasis placed in the EOC report on the principle of equal pay for work of equal value. In this regard, it notes the recommendation that a significant improvement on the present framework of litigation would be to empower employment tribunals not only to grant an individual remedy in an individual case, but also to make a general finding, and to order changes to a collective agreement or pay structure. It further notes that the EOC recommended that a legal obligation should be placed on employers to carry out a pay systems review and adopt an equal pay policy as described in the EOC's Code of Practice on Equal Pay, including an obligation to publish the outcome of the review to the workforce with a programme to achieve change. Noting that the EOC will submit its recommendations to the Secretary of State for Education and Employment at the end of 1998, the Committee requests the Government to provide it with a copy of these recommendations, as well as information on measures taken or envisaged to implement these recommendations.

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In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Angola, Australia, Azerbaijan, Barbados, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Côte d'Ivoire, Croatia, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, France, Gabon, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Hungary, Indonesia, Iraq, Ireland, Israel, Italy, Jamaica, Jordan, Kyrgyzstan, Latvia, Lebanon, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Mexico, Mongolia, Morocco, Mozambique, Netherlands, Nicaragua, Niger, Nigeria, Norway, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, Saint Lucia, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Sierra Leone, Slovenia, Spain, Sri Lanka, Sudan, Swaziland, Switzerland, Syrian Arab Republic, Tajikistan, Togo, Tunisia, Ukraine, Uruguay, Venezuela, Yemen, Zimbabwe.*

Convention No. 101: Holidays with Pay (Agriculture), 1952

Ecuador (ratification: 1969)

For several years, the Committee has expressed regret that sections 73 and 74 of the Labour Code contravene *Articles 1, 3 and 8 of the Convention*. Specifically, section 73 authorizes employers to refuse leave during one year in certain cases, and section 74 permits workers to postpone leave for three consecutive years so as to accumulate it in the fourth year. The Committee once again recalls that, under the terms of the Convention, workers employed in agricultural undertakings and related occupations must be granted an annual holiday with pay (*Article 1*) whose minimum duration must be determined in a manner approved by the competent authority (*Article 3*), and that any agreement to relinquish the right to an annual holiday with pay, or to forego such a holiday, must be void (*Article 8*). The Committee refers to its General Survey of the Convention in 1964 and recalls that a certain minimum part of the annual holiday must be granted each year, even where postponement of annual leave is permitted (paragraphs 177 to 181). Any other approach would be contrary not only to the fundamental provisions of the Convention but to the spirit in which it was conceived.

The Committee notes with regret that the Government's last report does not contain any new element with regard to bringing national legislation and practice into conformity with the provisions of the Convention. It urges the Government to take the necessary measures to that end as soon as possible.

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In addition, a request regarding certain points is being addressed directly to *Sierra Leone*.

Convention No. 102: Social Security (Minimum Standards), 1952

Croatia (ratification: 1991)

1. *Article 10 of the Convention, in relation to Article 69.* With reference to its previous observations, the Committee recalls that the Union of Autonomous Trade Unions of Croatia (SSSH) alleged, in comments communicated in March 1995, April, September and November 1997, that, since the entry into force of the Health Insurance Act on 13 August 1993, a large number of workers in Croatia have been denied health protection on the basis of its section 59 (remaining unchanged in the revised text of this Act published in the *Official Gazette* No. 1/97 of 3 January 1997). Section 59 provides, in particular, that for contribution payers who fail to pay the insurance contribution, the use of health protection funded by the Croatian Institute for Health Insurance shall be reduced to the right to emergency medical aid only. While drawing the Government's attention to the fact that *Article 69* of the Convention, which enumerates the cases in which benefits provided under the Convention, including medical care, may be suspended, does not refer to the situation of non-payment of contributions on behalf of the insured person, the Committee asked the Government to indicate the measures taken or contemplated to bring its national legislation and practice in this respect into compliance with the Convention. It has also asked the Government to supply a copy of the decision, once adopted, of the Constitutional Court of the Republic of Croatia at the request of the SSSH to pronounce on the constitutionality of section 59 of the Health Insurance Act, as well as the Government's written reply, requested by a Member of Parliament, on the measures contemplated in order to harmonize section 59 of the said Act with the Croatian Constitution and Convention No. 102.

In its latest report, the Government provides detailed information on the questions relating to health insurance, in particular, and supplies the text of the ruling of the Constitutional Court of the Republic of Croatia handed down on 15 July 1998 to initiate the procedure of assessment of constitutionality of section 59, paragraphs 2 and 3, of the Health Insurance Act. The Government also refers to the discussion concerning this case at the Conference Committee in June 1998.

At the Conference Committee, the Government representative stated that in the Croatian health insurance system the obligation to make the payment of the employees' contributions lay with the employer, who was defined as a "contribution payer", while self-employed persons and equivalent groups were obliged to pay the contributions themselves. Under section 59(2) of the Health Insurance Act, the right to health care could only be restricted for persons who were obliged to pay contributions themselves. This provision did not therefore constitute an authorization to restrict the right of employees to health care. The Croatian Institute for Health Insurance maintained a list of persons who were obliged to pay contributions themselves and of those whose right to health care was restricted for the non-payment of contributions. It also maintained a list of legal and physical persons whose payments of contributions for employees were also more than three months overdue. The existence of the two lists was misleading, since it might wrongly be assumed that section 59(2) also referred to the second list. The problem of the collection of insurance contributions in the country had worsened in 1995 and 1996 as, in the general economic and social situation affected by war and transition, the employers were faced every month with the problem of payment of wages, including the payment of health and pension insurance contributions. The Institute endeavoured to resolve such problems by making special arrangements with the employers for the deferral of contributions. In 1996, the Government requested the Institute to keep records of contribution arrears and, within the framework of the programme for the rehabilitation and restructuring of enterprises in difficulties but which had good prospects of recovery, it had transferred insurance claims to the state budget, thus providing considerable resources for health and pension insurance of employees in these enterprises. According to the Government representative, it was clear that the SSSH's allegations of a massive denial of the right of employees to health care was not correct. The Government was aware that the problems of the financing of health care could only be resolved by the recovery of the economy, by a reduction in unemployment and a reform of the health care and health insurance systems. A commission had therefore been established for the reform of these systems, in which representatives of workers and employers would be involved. The Government would also welcome assistance from the ILO in this respect.

The Committee takes due note of the information and explanations provided by the Government and of the discussion which took place in the Conference Committee on this case. It notes that the Government representative insisted that section 59(2) of the Health Insurance Act could not be legally interpreted as an authorization for restricting the right to health protection of employees; that, since the beginning of the year 1998, not a single worker had been deprived of this right; that the list of persons whose right to health protection was restricted for the non-payment of contributions, maintained by the Croatian Institute for Health Insurance, concerned only those persons who were obliged to pay contributions themselves; and that the second list maintained by the Institute, that of legal and physical persons whose payments of contributions for employees were overdue for more than three months, was not related to section 59(2) of the Act. The Committee recalls in this respect that the two letters, dated 24 June and 23 July 1997, submitted by the SSSH and referred to in the Committee's previous observation, sent respectively by the Institute to its regional offices and by the regional Zagreb office of the Institute to health centres and physicians, in their English translation expressly stated that the reduction of benefits to health care payable by the Institute was to be applied to "all *employees*, and members of the families, of *contribution payers* who have not partially or totally settled their obligations towards the Croatian Institute for Health Insurance for three months and more". For this purpose, according to the first letter, the regional offices of the Institute were placed under an obligation to inform its Department for the Collection of Contributions of "the name of the contribution payer — a legal person", with the exception of certain specified joint-stock companies, indicating the number of the policy and the date of reduction. As regards "*other* contribution-payers (persons engaged in economic activity, professional activity or those who are paying contributions themselves and others)", their total number was to be communicated. From the text of these instructions it is difficult not to conclude that the list of the legal persons who failed to pay contributions for their employees was being maintained by the Institute for the express purpose of reducing health care in respect of their employees and members of their families under the provisions of section 59(2) of the Health Insurance Act. The Committee further notes that the Worker members in the Conference Committee, including the Worker member from Croatia, pointed out during the discussion of this case that one of the most significant socio-economic problems in the country was the non-payment of wages to approximately 100,000 workers by their employers, who at the same time did not pay the workers' health insurance contributions. According to trade union sources, there had been a number of cases in which medical care had been denied to such workers, and since section 59 was open to very different interpretations, it was necessary for the Government to proceed with modifications to the law, so that clear and unambiguous provisions could be adopted. Finally, in its conclusions, the Conference Committee had invited the Government to indicate in its next report the measures taken or envisaged to bring its national law and practice into conformity with the Convention, in particular as regards section 59 of the Health Insurance Act.

The Committee notes that the Government's latest report, which was received in September 1998, does not mention any measure which would attest to a change in the situation. However, it notes with interest the ruling handed down by the Government of the Constitutional Court of the Republic of Croatia referred to above, in which, having examined the allegations of the SSSH and the provisions of the legislation, the Court decided that there were sufficient grounds to open the procedure for questioning the constitutionality of the provisions of section 59, paragraphs 2 and 3, of the Health Insurance Act without waiting for the corresponding statements requested from the competent bodies. The Court pointed out that general medical care, specialist health care and hospitalization were indissociably included in the right to health protection, and that limiting coverage to emergency medical care, with the total exclusion of other forms of health protection, called into question the basis of the said section, paragraph 2, as it was in contradiction to the provision of the Constitution guaranteeing to every citizen the right to health protection. The Court also recalled that the Institute had the possibility to claim, through the body empowered to collect the funds and on the basis of the decision of a tribunal, the payment of unpaid insurance contributions and the transfer of the corresponding amounts from the bank account of the contribution payer to the Institute. Taking into account that the insured persons did not have the power to exercise any influence on the person who was obliged to pay their contributions, and sustained damage when this person failed to pay them, the Court considered that the constitutionality of section 59, paragraphs 2 and 3, reducing health protection seemed doubtful. Furthermore, in its opinion, there were good reasons to believe that these provisions were also in conflict with Convention No. 102, which forms part of the legal order of the Republic of Croatia and which, by virtue of section 134 of the Constitution, has primacy over national law.

In this situation, the Committee trusts that in its next report the Government will not fail to supply detailed information on the measures taken to ensure that section 59 of the Health Insurance Act is not interpreted in law and used in practice so as to reduce the right to health protection of the insured workers (and their dependants) whose employers have not paid contributions on their behalf. It hopes that, in the immediate future, the Government will use its authority to request the Croatian Institute for Health Insurance to issue new instructions to its regional offices and to health centres and physicians expressly requiring them not to reduce health care with respect to employees (and members of their families) of contribution payers who failed to pay contributions on their behalf, and to take all other steps necessary to ensure that such practice will not be repeated. It also hopes that the question of compliance with *Articles 10 and 69* of the Convention in this respect will be brought to the attention of the commission established to proceed with the reform of the health care and health insurance systems, referred to by the Government representative at the Conference Committee, and that the Government will supply information on its work. In addition, the Committee would like the Government to supply the text of the final decision of the Constitutional Court, once handed down. Finally, it would like to draw the Government's attention to the possibility of requesting the necessary assistance from the competent technical department of the Office.

2. With reference to its previous observation, the Committee has examined the questions raised by the Association of Clubs of Military Retirees of the Union of Retirees of Croatia, in its communications received in April and August 1997, with regard to the application of Conventions Nos. 48 and 102, together with the Government's written reply received in November 1997, as well as the oral explanations given by its representative in the Conference Committee in June 1998. It has also taken note of the comments of the said Association, dated 17 October 1998, on the Government's latest report on the application of Convention No. 48. The Association alleges partial implementation by Croatia of the obligation it assumed in 1991 to take over the payment of pensions due to army pensioners of the former Federal Army (JNA) with continuous residence in Croatia. It specifies that the amount of the pension paid to the above-mentioned retirees as from 1 January 1992 by the Republic of Croatia constituted only 63.22 per cent of the amount of the pension to which they were entitled in December 1991, and that all subsequent adjustments of pensions have not changed the situation. In its reply, the Government states that the military pensions of the former Federal Army paid in December 1991 reflect a special increase of 40 per cent which has been given to the officers of the JNA on active service as a pay increase. The criterion for setting military pensions at 63.22 per cent of the pension amount of December 1991 was arrived at by equating the highest amount of military pension to the highest pension paid out of the Republic Fund for the Retirement and Invalidity Insurance of the Workers of Croatia; this ratio was used to determine the amount of all of the other military pensions. Starting from 1 January 1993, military pensions were increased so that in real terms they attained 73 per cent of the level of December 1991. The Government also stated that military pensions are being adjusted in the same way as pensions of all other classes of retired persons. While taking due note of this information, the Committee would like the Government to include in its next reports information on any further increases and regular adjustments of the pensions of the military retirees concerned.

[The Government is asked to report in detail in 2000.]

Libyan Arab Jamahiriya (ratification: 1975)

1. *Part IV (Unemployment benefit) of the Convention.* The Committee notes with regret that the Government's report received in 1997 only reproduces the information provided previously and adds no new element allowing it to assess developments in the situation. In these circumstances, the Committee wishes to recall that the unemployment

benefit paid by the employer cannot be considered as sufficient to give effect to *Part IV* of the Convention, which has to be implemented by a system of social security organized and financed in accordance with *Articles 71 and 72* of the Convention. The Committee therefore hopes that the Government will not fail to re-examine the situation and to take all the necessary measures, in both law and in practice, to establish an unemployment protection system in accordance with the Convention.

2. *Part VII (Family benefit)*. The Committee notes with regret that the Government's report contains no new information on this subject in reply to its previous observation. It is therefore bound to recall that section 24 of the Social Security Act provides for the provision of family allowances to pensioners only whereas, in accordance with *Article 41* of the Convention, the persons protected shall comprise: (a) prescribed classes of employees, constituting not less than 50 per cent of employees; or (b) prescribed classes of the economically active population, constituting not less than 20 per cent of all residents; or (c) all residents whose means during the contingency do not exceed prescribed limits. The Committee once again hopes that the Government will be able to re-examine the situation so as to include in the Libyan social security scheme measures relating to family benefit in order to ensure that full effect is given to *Part VII* of the Convention.

Mexico (ratification: 1961)

With reference to its previous comments, the Committee recalls that, following the coming into force of the new Social Security Act of 1 July 1997, which concerns in particular the branches for which Mexico has accepted the provisions of the Convention, the Mexican social security system has undergone far-reaching changes, especially with regard to pensions. In this respect, the Committee also notes the Act respecting retirement savings systems of 25 April 1996 and the regulations issued thereunder. The new legislation associates the private sector with the achievement of the objectives pursued by social security. Subject to certain transitional measures, workers who are insured under the Mexican Social Security Institute now have to open an individual account with a retirement fund administration company (AFORES) of their choice. This individual account receives the contributions paid by the worker, the employer and the State. Retirement fund administration companies are the financial entities with the exclusive responsibility of managing the individual accounts of their insured persons and are subject to authorization by the National Commission of the Retirement Savings System. AFORES invest the resources placed in the individual accounts through companies which specialize in the investment of retirement funds (SIEFORES). These latter must also obtain authorization from the above Commission, which is also responsible for supervising their activities and those of the AFORES. These companies earn commissions which are debited to the individual accounts of workers. At the time of their withdrawal, workers convert the balance of their individual account into a pension which may take the form of an annuity or a programmed retirement pension. The resources accumulated in the individual accounts also serve to finance invalidity and survivors' benefits. Workers may also, under certain conditions, withdraw amounts from their individual accounts for specific purposes (marriage, unemployment, etc.). Furthermore, the State guarantees a minimum pension, the monthly amount of which is equivalent to the general minimum wage for the federal district.

The Committee also recalls that the new Mexican social security system was the subject of a communication received in June 1997 from a group of workers' organizations which consider that the reform of the social security system is prejudicial to workers and their families and suppresses certain fundamental rights, including the guarantee of full health protection. These organizations also refer to the risks implied by the new system of individual capital accumulation and the private administration of pensions, as well as the deterioration of health services. The increase in the qualifying period for entitlement to a retirement pension is also criticized by these organizations. These observations were transmitted to the Government in August 1997.

The Committee has examined the report provided by the Government for the period 1996-1997 in the light of the new legislation. It notes that this report, which contains a detailed description of the new provisions of the Social Security Act, does not include all the information, and particularly the statistics, which are necessary for it to make a full assessment of the manner in which the new legislation ensures the application of the Convention.

The Committee therefore wishes to draw the Government's attention to and/or be provided with information on the following points. It also hopes that the Government will not fail to provide the information that it considers necessary in response to the observations made by the above workers' organizations.

I. *Level and duration of benefits*

1. *Sickness benefit (Article 16)* and *maternity benefit (Article 50) of the Convention*. The Committee notes that under section 92 of the Social Security Act, sickness benefit is set at 60 per cent of the last wage subject to contributions. Maternity benefit is equal to the last wage subject to contributions under the terms of section 101 of the Social Security Act. In its report, the Government refers to *Article 66* of the Convention for the calculation of sickness benefits. In this respect, the Committee reminds the Government that, since sickness and maternity benefit are, in accordance with the Social Security Act, dependent on the previous earnings of the beneficiary, *Article 65* of the Convention is applicable. In these conditions, the Committee would be grateful if the Government would indicate in its next report whether, and if so under which provisions, the wage that is subject to contributions and/or the level of sickness and maternity benefit are subject to a ceiling. If so, it requests the Government to provide all the statistics required by the report form under Article 65 (Titles I, II and V).

2. *Old-age benefits (Articles, 28, 29 and 30)*. (a) The Committee recalls that, according to these provisions of the Convention, read in conjunction with *Part XI (Standards to be complied with by periodical payments)*, the level of the old-age benefit shall be equivalent to 40 per cent of the reference wage for a standard beneficiary who has completed a qualifying period which may be 30 years of contribution or employment, or 20 years of residence. This level of benefit must be granted throughout the contingency, irrespective of the type of pension selected (annuity or programmed retirement). The Committee notes that, for persons who fulfil the qualifying conditions for an old-age pension set out in the legislation, the level of the benefit would not appear to be determined in advance, but depends on the capital accumulated in the individual accounts of workers, and particularly on the return obtained on that capital. However, under the terms of section 170 of the Social Security Act, the State guarantees workers who fulfil the age conditions and the qualifying period set out in section 162 of the Act with a "guaranteed pension", the amount of which is equivalent to the general minimum wage for the federal district. In these conditions, the Committee hopes that the Government will be able to provide with its next report all the statistics requested in the report form under *Article 66*, in order to enable it to determine whether in practice the minimum amount of the old-age pension attains the percentage required by the Convention.

(b) The Committee requests the Government to indicate the manner in which the application of *Article 30* of the Convention (payment of the benefit throughout the contingency) is ensured for the "programmed retirement" method, as set out in section 159 of the Social Security Act. Please indicate in particular whether, once the accumulated capital in the individual account is exhausted, the beneficiary is entitled to receive the "guaranteed pension" envisaged in section 170 of the Social Security Act.

(c) The Committee notes that, under section 162 of the Social Security Act, workers are entitled to an old-age pension when they reach the age of 65 years and have completed a minimum qualifying period of 1250 weeks of contribution. The Committee requests the Government to indicate in its next report the manner in which effect is given to *Article 29, paragraph 2(a)*, of the Convention, which provides that a reduced benefit shall be secured at least to a person protected who has completed, prior to the contingency, a qualifying period of 15 years of contribution or employment.

3. *Employment injury benefit (Article 36), invalidity benefit (Articles 56 and 57)* and *survivors' benefit (Articles 62 and 63)*. The Committee would be grateful if the Government would provide all the statistical information required by the report form on the calculation of benefits required under *Article 65* (Titles I, II and IV).

Furthermore, the Committee notes that, under the terms of section 141 of the Social Security Act, the invalidity pension for workers who have completed the qualifying period set out in section 122 is equivalent to 35 per cent of the average wage paid during the 500 weeks prior to the provision of the pension, adjusted in accordance with the national consumer price index. The amount of the benefit is increased, among other elements, by family benefits. The amount of the survivors' benefit provided to a standard beneficiary (widow with two children) is also 35 per cent of the above wage, under the terms of sections 131, 135 and 144 of the Social Security Act. The Committee recalls in this respect that, in accordance with the above provisions of the Convention, in conjunction with Part XI (Standards to be complied with by periodical payments), the invalidity benefit, increased by the amount of any family allowances, provided to a standard beneficiary (man with wife and two children) shall be at least 40 per cent of the previous earnings and family allowances received by the beneficiary when he was working. The amount of the widow's pension must also, for a standard beneficiary (widow with two children), be 40 per cent of the previous earnings of the family breadwinner (including the family allowances payable both during employment and during the contingency).

However, the Committee notes that both the invalidity pension and the widow's pension may not be lower than the "guaranteed pension", which is equal to the general minimum wage for the federal district (sections 141 and 170). In these conditions, the Government may wish to refer to the provisions of *Article 66* of the Convention, to which it may also have recourse, and the Committee requests it to provide with its next report all the statistics required by the report form under this provision of the Convention (Titles I, II and IV).

II. *Adjustment of benefits (Articles 65, paragraph 10, and 66, paragraph 8)*

The Committee notes the information provided by the Government on the changes in the cost of living and minimum wage during the period covered by the report. In order to be able to fully assess the manner in which effect is given to these provisions of the Convention, which provide for the adjustment of long-term benefits to the cost of living or the general level of earnings, the Committee would be grateful if the Government would provide in its next report all the statistical information required by the report form under *Article 65* (Title VI) including fluctuations in the cost of living, changes in the general level of earnings and changes in benefit levels (average per beneficiary and benefit for a standard beneficiary), as well as changes in minimum benefit levels.

III. *Financing of benefits (Article 71, paragraphs 1 and 2)*

The Committee notes the information concerning the financing of the various benefits. It requests the Government to provide in its next report the statistical information required by the report form under *Article 71 (point 3)* for the Parts of the Convention which have been accepted by Mexico.

IV. *Administration and control of the social security system (Articles 71, paragraph 3, and 72, paragraph 1)*

The Committee notes the information contained in the Government's report. It would be grateful if the Government would indicate the *measures taken in practice* to ensure the application of *Articles 71, paragraph 3 and 72, paragraph 2,* of the Convention. In this respect, it recalls the importance of undertaking periodical actuarial studies and calculations, as required by *Article 71, paragraph 3.*

V. *Participation of protected persons in the administration of social security (Article 72, paragraph 1)*

The Committee notes the information provided by the Government. It would be grateful if the Government would indicate in its next report whether and, if so, the manner in which the representatives of the persons protected participate in the administration of AFORES and SIEFORES, which form an integral part of the social security system.

VI. *Coverage of the system (Articles 9, 15, 27, 33, 48, 55 and 61, in relation to Article 76(b)(i))*

The Committee notes the information provided by the Government to the effect that the social security scheme applies in particular to all employees, among other persons. It would be grateful if the Government would provide in its next report all the statistical information required under *Article 76, paragraph 1(b)(i), of the report form (Title I).*

VII. Finally, the Committee would be grateful if the Government would provide detailed information with its next report on the implementation of the transitional measures with regard to persons who are already insured under the Mexican Social Security Institute before the coming into force of the new Social Security Act. Please also indicate the measures adopted, in accordance with *Article 65, paragraph 10,* of the Convention, to ensure the adjustment of old-age, invalidity and survivors' benefits, as well as employment injury benefit, which have been or will be provided under the former system of redistribution, by providing the statistics required by the report form under this Article of the Convention (Title VI).

[The Government is asked to report in detail in 2000.]

Peru (ratification: 1961)

Health care scheme

In its previous comments, the Committee had requested the Government to provide detailed information on the implementation of the new health care system following the adoption of Act No. 26790 to modernize social security in the area of health and of its implementing regulations in Supreme Decree No. 009-97-SA, which entered into force in 1997. The Committee had therefore asked the Government to provide a detailed report giving information on the legislation and the practice with regard to each provision of the

Convention. In its report, the Government indicates that, in view of the recent publication of this new legislation, it is unable at this stage to provide information on the implementation of the new system. Moreover, in its report on the Sickness Insurance (Industry) Convention, 1927 (No. 24), the Government sets out a number of general observations. The Committee notes this information and the adoption of Supreme Decree No. 001-98-SA, a copy of which is provided by the Government. The Committee also notes the observations made on 22 May 1998 by the Single Trade Union of Technicians and Specialist Auxiliary Staff of the Peruvian Social Security Institute alleging among other things that the purpose of Act No. 26790 and its implementing regulations is to dismantle social security and the Peruvian Social Security Institute (IPSS) by placing them in the hands of private individuals and foreign capital. In its reply, the Government denies this allegation and emphasizes that it has no intention of privatizing social security in the country, and that the IPSS should be regarded as administering the general scheme and the health care providers (EPS) as an option available to workers.

The Committee recalls that Act No. 26790 to modernize social security in the area of health and Supreme Decree No. 009-97-SA provide for the involvement of the private sector in the area of health care. The health care services provided by the IPSS are complemented by the health care plans and programmes of the health care providers (EPS). The latter can be public or private enterprises or institutions independent of the IPSS whose sole purpose is to provide health care services through their own infrastructure or third-party facilities. In this new system, workers who are members of private health care programmes will receive cash medical benefits from the IPSS in the event of serious illness and from their health care provider (or their employer's own health care services) for routine ailments. Employers providing health care, either through an EPS or through their own services, are given a credit for the amount of their contributions to the IPSS (sections 15 and 16 of the Act). The Act in principle guarantees that workers may freely choose whether to join the IPSS or an EPS (section 15 of Act No. 26790 and sections 46, 50, 51 and 52 of Supreme Decree No. 009-97-SA).

Given the fundamental changes made by the new legislation in the area of health care, the Committee once again expresses the hope that the Government will provide detailed information in its next report on the legislation and the practice with regard to each of the Articles of the Convention, in accordance with the report form. While awaiting this information, the Committee wishes to draw the Government's attention to the following points.

Part II (Medical care), Article 10 of the Convention (in conjunction with Article 8). Section 12 of Supreme Decree No. 009-97-SA specifies that curative medical care must include both out-patient and hospital in-patient medical care, medication, prostheses, necessary orthopaedic appliances and rehabilitative services. As regards maternity benefits, they should cover care during pregnancy, confinement and the postnatal period. Under section 9 of Act No. 26790 and sections 11 and 20 of the above Supreme Decree, the benefits provided may not be inferior in scope to the minimum health plan set out in Annex 2 of the Supreme Decree, read in conjunction with Annex 3. Care comes under either simple cover *(capa simple)* or complex cover *(capa compleja)*. Simple cover includes the most frequent and least complex types of medical treatment and is described in Annex 1 of the Supreme Decree. This simple cover is paid for either by the IPSS or by enterprises, through their own services or through health care plans contracted with an EPS. Complex cover is provided by the IPSS (section 34 of the Supreme Decree). Moreover section 90 of the Supreme Decree describes how in practice the responsibilities are to be apportioned between the EPS and the IPSS.

The Committee hopes that the Government will provide detailed information on the implementation of the above-mentioned provisions of the Act and of the Supreme Decree so as to allow it better to assess the application in practice of *Article 8* of the Convention, according to which contingencies covered must include *any morbid condition*, and *Article 10* of the Convention, which specifies the nature of medical benefits which must be provided. In this regard, the Committee also hopes that the Government will indicate which provisions govern the domiciliary visits by general medical practitioners provided for in *Article 10, paragraph 1(a)(i)*. Finally, the Committee hopes that the Government will provide with its next report examples of insurance policies concluded with an EPS, and specimens of membership forms.

Part II (Medical care), Article 9, Part III (Sickness benefit), Article 15, and Part VIII (Maternity benefit), Article 48. The Committee hopes that the Government will provide detailed information on the geographical coverage of the new health care system in respect both of the IPSS and of the EPS, and indicate the regions in which the EPS have not yet been established.

Part XIII (Common provisions) (in conjunction with Parts II, III and *VIII), Article 71.* The Committee notes the establishment of the Superintending Board of health care providers (SEPS) which is responsible for authorizing, regulating and supervising the activities of the EPS and for ensuring the correct use of the funds managed by those bodies (section 2(d) of the aforementioned Supreme Decree). The SEPS is a decentralized public health body financed by levies from the bodies subordinate to it. The Committee hopes that the Government will provide detailed information on the manner in which the SEPS carries out supervision in practice, including copies of any inspection reports or other relevant official documents. In this regard, the Committee notes that, under section 2 of the Act, and sections 2(a) and 3 of the Regulations, the IPSS is responsible for administering social security in the field of health care. The Committee would like the Government to clarify the manner in which the IPSS carries out this mandate, in particular with regard to the EPS.

The Committee also hopes that the Government will indicate whether, when the new system of social security in the field of health was established, any actuarial studies were undertaken into the financial viability of the participant bodies, in particular the IPSS which will continue to bear responsibility for the longer-term and more complex cases of illness. If such studies were carried out, the Committee requests the Government to provide copies of any such studies. Studies of this kind appear to be all the more necessary given that enterprises which provide health care through the intermediary of the EPS or through their own services are entitled to a credit for workers' contributions equal in principle to 25 per cent of those contributions (sections 15 and 16 of the Act). The Committee hopes further that the Government will provide information on the manner in which the controlling authority will supervise the implementation in practice of the minimum health care plans, both by the EPS and employers' own health care services.

Article 72. The Committee hopes that the Government will provide detailed information on the participation of protected persons in the administration of the system, particularly in the EPS and employers' health care services. It also hopes that the Government will indicate whether persons protected are represented on the management boards of the SEPS.

Pensions scheme

I. Private pensions system

The Committee takes note of the Government's reports. It also notes the adoption of Supreme Decree No. 054-97-EF of 13 May 1997 approving the single ordained text of the Act respecting the private system of administration of pension funds. In its report the Government reiterates that the private pensions system cannot be examined within the scope of Convention No. 102. The Government refers to the conclusions of the Conference Committee on the Application of Standards, which in June 1997 agreed that the coexistence within the social security system of both a public and a private scheme, as has been the case in Peru since 1992, is not in itself incompatible with the Convention, since the Convention allows the minimum level of social security to be maintained through various methods. The Government also draws attention to the flexibility of Convention No. 102, which allows various approaches to attaining the same level of social security in order to take into account the wide range of national solutions and the rapid and constant developments in systems of protection. The Government points out that the national pensions system and the private pensions system were designed to coexist.

The Government indicates that workers entering the Peruvian labour market for the first time have, in principle, the option of joining one or other of the systems. However, the Committee notes that, in the event a worker who has not subscribed to the private pensions system starts work, the employer is obliged to sign him up with the Pension Fund Administrator (AFP) of his choice, unless the worker indicates in writing within ten days that he wishes to join or remain in the National Pensions System (section 6(2) of Supreme Decree No. 054-97-EF). The Committee once again recalls that workers registered with an AFP can no longer rejoin the system administered by the Insurance Standardization Office (ONP). The Committee therefore considers that, in practice, the private pensions system which coexists with the public system may eventually replace it.

The Committee agrees that Convention No. 102 was conceived in a highly flexible manner and that it is possible to achieve the same level of social security through different approaches, the Conference having deliberately refused to adopt a rigid terminology. Nevertheless, the Convention embodies certain principles of general applicability for the organization and functioning of social security systems (*Articles 71 and 72* of the Convention). In order to allow it to assess how effect is given to these principles and to other provisions of the Convention, the Committee again urges the Government to indicate in its next report how the questions set out below, which have been raised for a number of years, have been resolved.

1. *Part V (Old-age benefit), Articles 28 and 29, paragraph 1 (in conjunction with Article 65* or *Article 66).* The Committee recalls that the rate of the pensions provided by the private pensions system does not appear to be determined in advance, since it depends on the capital accumulated in individual capitalization accounts, and particularly on the earnings from these accounts. The Committee takes note of the statistical data provided by the Government in September 1998 on the pensions adjustment factor and the monthly average pension per member; this data are not, however, sufficient to allow the Committee to assess the effect given to the Convention. The Committee once again recalls that, under *Article 29, paragraph 1,* read in conjunction with *Articles 28 and 65 or 66*, an average benefit at least equal to 40 per cent of the reference wage has to be secured to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be 30 years of contribution. The Committee would therefore be grateful if the Government would provide statistical data as requested in the report form, such as to allow it to make a full evaluation of the extent

to which the old-age benefit, in all cases and irrespective of the type of system selected, attains the level prescribed by the Convention.

The Committee takes note of the seventh and final provision of Supreme Decree No. 054-97-EF which provides that the requirements and conditions such as to allow the private pensions system to guarantee a minimum retirement pension for its members shall be established by a Supreme Decree approved by the Ministry of Economics and Finance. The Committee recalls in this regard that *Article 66* of the Convention can be applied within the framework of a private pensions system provided that the minimum old-age benefits payable to a standard beneficiary with 30 years of contribution are not less than the minimum amount required by the Convention (40 per cent of the wages of an ordinary adult male unskilled labourer within the meaning of *paragraphs 4 and 5* of this Article). The Committee would therefore be grateful if the Government in its next report would provide a copy of the Supreme Decree adopted in implementation of the above-mentioned final provision of Supreme Decree No. 954-97-EF, as well as statistical information required by the report form.

2. *Article 30.* The Committee again requests the Government to indicate the measures adopted or envisaged to guarantee the full application of this provision of the Convention (payment of the benefit throughout the contingency) with regard to the "programmed retirement" system, under which monthly withdrawals may be made from the account until the accumulated capital is exhausted, contrary to the above Article. In this regard, the Committee also refers to its comments on the application of *Article 4* of the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35).

3. *Part IX (Invalidity benefit), Article 58.* The Committee again requests the Government to indicate how full effect is given to this provision of the Convention (provision of the benefit throughout the contingency or until an old-age benefit becomes payable) in the event of the permanent total invalidity of a worker who has selected the "programmed retirement" system.

4. *Part XIII (Common provisions), Article 71, paragraph 1.* The Committee notes that the cost of the benefits, certain administrative expenses and certain commissions are paid entirely by the worker who is insured under an AFP. Employers' contributions appear to be of a voluntary nature. According to *Article 71, paragraph 1,* "the cost of the benefits provided ... and the cost of the administration of such benefits should be borne collectively by way of insurance contributions or taxation or both in a manner which avoids hardship to persons of small means and takes into account the economic situation of the member and of the classes of the persons protected". The Committee once again requests the Government to indicate the measures which have been adopted or envisaged to give full effect to the Convention in this respect.

5. *Article 71, paragraph 2.* The Committee again recalls that, under this provision of the Convention, the total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the total of the financial resources allocated to the protection of employees and their spouses and children. In order to be in a position to assess the effect given to this provision of the Convention, the Committee again requests the Government to provide in its next report the statistics requested in the report form under this Article of the Convention for both the private pensions and health systems and the schemes administered by the public system.

II. System of pensions administered by the ONP

The Committee again draws the Government's attention to the following specific points.

1. *Part V (Old-age benefit), Article 29, paragraph 2(a).* In the report received in September 1998, the Government acknowledges that Peruvian law does not envisage a case of the kind described in this provision. The Committee recalls that *Article 29, paragraph 2(a)*, provides that, where the old-age benefit is conditional upon a minimum period of contribution, a reduced benefit shall be secured to any insured person who has completed a qualifying period of 15 years of contribution or employment. The Committee again points out that the qualifying period laid down in the legislation is higher than the 15-year period established in the Convention. In these circumstances, the Committee can only ask the Government once again to take the necessary measures to ensure that persons protected are entitled to a reduced benefit after 15 years of contribution, as provided by this provision of the Convention.

2. *Part XI (Calculation of periodical payments), Articles 65 and 66.* The Committee notes the declaration of the Government according to which the maximum amount of the old-age pension paid by the National Pensions System is insufficient and is not proportionate to the workers' contributions. It also notes that, as of 1 January 1997, contributions to the National Pensions System will be not less than 13 per cent of the total insurable income of each worker. In addition, a National Public Savings Fund has been established, profits from which will be used to pay benefits to pensioners whose total monthly pensions do not exceed 1,000 new soles. The Committee hopes that the Government will be able to go on providing information on the measures taken or envisaged to increase the pensions paid by the National Pensions System so as to reach the level prescribed by the Convention. The Committee further requests the Government to provide all statistics required by the report from under *Article 65 or 66*, including statistics on the review of long-term benefits to take account of changes in the cost of living. The Committee again recalls the importance that it attaches to the revision of the rates of current periodical payments in the case of long-term benefits, as required by *Article 65, paragraph 10, and Article 66, paragraph 8.*

III. Supervision of the private and public pensions systems

In its report, received in September 1998, the Government indicates that the State assumes overall responsibility for matters relating to the provision of benefits and takes any measures required for this purpose and for ensuring sound administration of institutions and services involved in implementing the Convention. The Committee would be grateful if the Government would indicate the *specific measures adopted* to apply *Article 71, paragraph 3,* and *Article 72, paragraph 2,* with regard both to the private and public pensions systems. In this context, the Committee recalls the importance of the regular actuarial studies and calculations required by *Article 71, paragraph 3.*

As regards the private system, the Committee takes note of the fact that, in accordance with section 23 of Supreme Decree No. 054-97-EF, investments made by the AFP are required to generate a certain minimum level of profits. Moreover the Government is responsible for determining criteria of minimum profitability (guaranteed by the statutory reserve formed from the AFP's own funds and other sources). The Committee would be grateful if the Government would also indicate in its next report all the measures taken to ensure the minimum level of profits generated by the AFP for its members and provide a copy of the Supreme Decree approved by the Minister of Economics and Finance.

IV. Participation of persons protected in the administration of the system

1. The Committee again requests the Government to indicate the measures which have been taken or are envisaged, in the context of the Private Pensions System, to give effect to *Article 72, paragraph 1*, of the Convention, according to which, where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to the legislature, representatives of the persons protected shall participate in or be associated with the management, in a consultative capacity, under prescribed conditions. In this context, the Committee refers to information supplied by the Government in its report on the application of Convention No. 35, and trusts that the Government will indicate any new measures taken to allow the participation by the persons protected in the administration of the Private Pensions System.

2. The Committee requests the Government to indicate the manner in which representatives of the persons protected participate in the management of the pensions system administered by the ONP, and in particular whether they are represented on the management bodies of the ONP.

V. The Committee recalls the observations received from the Association of Retired Oil Industry Workers of the Metropolitan Area of Lima and Callao and notes the Government's statement to the effect that no authority can take up cases that are still before the courts or interfere with the work of the courts. The Committee refers to its previous comments and trusts that the Government will in due course provide copies of any final judicial decisions on cases brought in connection with the observations made by the Association of Retired Oil Industry Workers of the Metropolitan Area of Lima and Callao.

VI. While fully aware of the complexity of the issues raised, the Committee trusts that the Government, if it deems appropriate, will seek advice and assistance from the competent services of the Office on the organization and working of the public and private social security systems in the area of health care. The Committee trusts the Government will redouble its efforts to provide the information requested in the present observation and in the direct requests for 1997 and 1998.

[The Government is asked to report in detail in 2000.]

Portugal (ratification: 1994)

With reference to its previous comments, the Committee notes the information supplied by the Government in its report and the comments of the General Confederation of Portuguese Workers (CGTP-IN), appended to the Government's report. It notes the new information provided by the Government on 16 November 1998. The Committee wishes to draw the Government's attention to the following points.

1. *Part IV (Unemployment benefit), Article 23 of the Convention.* In its previous comments, the Committee requested the Government to provide explanations as to the reasons for fixing a relatively long qualifying period of a minimum length of 540 working days of salaried employment over the last 24 months (section 12 of Legislative Decree No. 79-A/89 establishing the unemployment insurance scheme of the general social security scheme) for entitlement to unemployment benefit, taking into account the fact that *Article 23* provides that the qualifying period shall not exceed the length considered necessary to preclude abuse. In this context, it also requested the Government to specify the reduction in the duration of the qualifying period decided upon in accordance with Decision No. 6/97 of the Council of Ministers for workers who are in involuntary unemployment

in the textile and clothing industry, and to indicate whether similar measures have been taken or are envisaged in respect of the workers protected in other economic sectors.

With regard to the reasons for the determination in the national legislation of a qualifying period of 540 days of salaried employment, the Government states in its report that these were related to several factors, including the need to establish a minimum period of employment and to adapt the unemployment protection scheme to the context of a labour market which is characterized by a certain rigidity, with contracts without limit of time being predominant and fixed-term contracts (a situation in which the completion of this qualifying period would raise even more serious problems) being of an exceptional nature. According to the Government, since the situation with regard to contracts of employment in Portugal is fundamentally stable, the qualifying period in question is not very difficult to complete. Furthermore, the basic criterion for entitlement to benefits is related to age. Finally, the Government considers that the relatively long duration of the periods of protection, which are intended in particular to protect older workers, have to be counterbalanced in terms of the payment of contributions. With regard to the measures adopted in the textile and clothing industry under the terms of Decision No. 6/97 of the Council of Ministers of 15 January 1997, the Government confirms that, in the context of the new development programme for the sector, the qualifying period for entitlement to unemployment benefit has been reduced from 540 days of salaried employment over the past 24 months to 270 days of salaried employment over the last 12 months preceding the date of unemployment. It adds that reductions in qualifying periods as a measure of social protection are not recent and have already been applied by virtue of Legislative Decree No. 291/91 of 10 August 1991 establishing additional protective measures for sectors undergoing restructuring and in certain geographical regions affected by the economic and social restructuring of one or more local enterprises with a significant volume of employment. In addition to the textile and clothing sectors, these measures have been applied in the cases of the enterprises LISNAVE, SETENAVE and SOLISNOR (shipyards), as well as in the context of the restructuring of the glass sector in 1994. However, the Government emphasizes that these are temporary and exceptional measures. Finally, the Government also emphasizes the existence of a social allowance for unemployment for which the required qualifying period is substantially lower, since the unemployed person must have completed 180 days of work during the 12-month period immediately preceding the date of unemployment. This benefit, which is intended in particular for precarious and unstable employment relationships, is combined with a condition relating to earnings to justify the existence of a more favourable system.

In its comments, the CGTP-IN considers that, from the point of view of the provisions of *Article 23* of the Convention, the qualifying period of 540 days is excessive since it has the effect of excluding from the protection a considerable number of workers who, due to the current precariousness and instability which characterize the labour market, do not succeed in completing this period. According to the CGTP-IN, this situation is in violation of the principle of the universality of protection set out in the Convention. With regard to the social allowance for unemployment which is designed to replace or supplement unemployment benefit, the CGTP-IN emphasizes that the number of persons covered is smaller because it is subject to an earnings condition.

The Committee notes this information. With regard to the reasons underlying the determination in the national legislation of a qualifying period for unemployment benefit, as set out in section 12 of Legislative Decree No. 79-A/89, and particularly those related to the predominance on the labour market of employment relationships without limit of time, age and the level of contributions paid in exchange for a relatively extended period of protection, the Committee recalls that *Article 23* only authorizes such qualifying period as may be considered necessary to preclude abuse. It also notes that, while the completion of a qualifying period may be relatively easy under the conditions of a fundamentally stable system of employment relations, as described by the Government, the same does not apply in the current labour market which, according to the CGTP-IN, is characterized by increasing precariousness and instability in employment. Even workers with contracts without limit of time are increasingly affected by economic restructuring, with the effect that measures to reduce the qualifying period may prove to be necessary in certain sectors in order to protect those who are made unemployed without having completed the full qualifying period set out in the legislation. With regard to workers with fixed-term employment contracts, whose numbers appear to be very substantial according to the information supplied by the CGTP-IN in the context of the application of the Termination of Employment Convention, 1982 (No. 158), the completion of the current qualifying period of 540 days of salaried employment during the last two years has become particularly difficult. In this respect, the Committee notes, for example, that in accordance with the regulations governing fixed-term contracts introduced recently in the conditions of service of the National Health Service by Legislative Decree No. 53/98 of 11 March 1998, a copy of which was provided by the Government, public health establishments are authorized to recruit one-third of their staff under fixed-term contracts, which may not exceed a total duration of two years. Finally, the Committee wishes to emphasize that the social allowance for unemployment, for which the qualifying period would appear to comply with the provisions of *Article 23*, cannot be considered a method of protection which gives effect to *Part IV* of the Convention, since the social allowance does not comply with the criteria set out in *Article 21(b)* as regards its scope (all residents whose resources during the contingency do not exceed limits prescribed). The Committee however notes that the Government refers in its thirteenth annual report on the application of the European Code of Social Security to the coming into force in the near future of a legislative decree totally revising the legal framework of unemployment insurance. It hopes that on this occasion the Government will reconsider the question of the qualifying period for entitlement to unemployment benefit established by section 12 of Legislative Decree No. 79-A/89 which, as the Government recognizes, is relatively long, in the light of the provisions of *Article 23*, taking into account the above comments. In any event, the Committee would be grateful if the Government would continue supplying information on any new measure adopted to reduce the qualifying period for unemployment benefit in specific economic sectors.

2. *Part VI (Employment injury benefit).* *(a)* *Article 36, paragraph 1 (in relation to Article 65, paragraph 10).* The Committee notes the information provided by the Government in reply to its previous comments concerning the legislative provisions determining the methods for the adjustment of benefits for employment injury and occupational diseases and the statistics on the adjustment of these benefits for the period 1997-98. With reference to the provisions which are in force (Legislative Decree No. 668/75 of 24 November 1975, as amended by Legislative Decree No. 39/81 of 7 March 1981), the Government states that pensions for invalidity of a degree that is lower than 30 per cent are not affected by the rules for the adjustment of pensions. It adds that the draft regulations under Act No. 100/97 of 13 September 1997 establishing the new legal framework for employment injury (which has not yet come into force) includes a chapter on the adjustment of pensions which recommends the adjustment of these pensions under the same terms as the pensions provided by the general social security scheme.

On this subject, the CGTP-IN alleges in its comments that the method for the adjustment of employment injury pensions is not in conformity with the provisions of

Article 65, paragraph 10, of the Convention since: (1) the adjustment does not apply to all pensions; and (2) the indirect method used for adjustment, under which increases in the level of benefits are determined by a new method of calculation based on the minimum wage fixed each year, do not ensure the maintenance of the real value of the pension in relation to fluctuations in the cost of living.

The Committee recalls that current periodical payments provided in the event of employment injury and occupational diseases, covered by *Article 36, paragraph 1*, of the Convention (with the exception of those covering temporary incapacity for work), shall be reviewed following substantial changes in the general level of earnings — *and not the minimum wage* — where these result from substantial changes in the cost of living, in accordance with *Article 65, paragraph 10*, irrespective of the degree of invalidity. It hopes that when it adopts the draft regulations under Act No. 100/97, to which it refers in its report, the Government will ensure that full effect is given to the Convention on these two points. The Committee requests the Government to provide a copy of the text when it is adopted.

(b) *Article 38 (in relation to Article 69(f))*. In its previous comments, the Committee raised the question of the conformity of Part VI, section 1(a) and (b), of Act No. 2127 of 1965 establishing the legal framework for employment injury and occupational diseases and section 12 of Order No. 642/83 approving the regulations of the National Insurance Fund for Occupational Diseases with the above provisions of the Convention. Under Part VI, section 1(a) and (b), of Act No. 2127 of 1965, accidents caused by fraud or resulting from an action or omission by the victim while that person was violating, without good reason, the safety rules, as well as accidents resulting from the serious and inexcusable fault of the victim, are not subject to compensation. Furthermore, section 12 of Order No. 642/83 also provides that serious and inexcusable fault excludes entitlement to compensation for occupational diseases. In view of the fact that *Article 69(f)* authorizes the suspension of benefit only in the case of the wilful misconduct of the person concerned, the Committee requested the Government to indicate the manner in which these provisions are applied in practice. In its report, the Government provides a résumé of judicial decisions on cases which occurred between 1995 and 1997 and emphasizes that these cases are relatively rare.

The Committee has examined the extracts of judicial decisions provided by the Government. It notes in particular that, in accordance with the case-law of the Supreme Court of Justice, serious and inexcusable fault presupposes the existence of inexcusable foolhardy behaviour, and not merely imprudence or lack of attention, lacking in an elementary attitude of prudence and constituting the unique cause of the accident. In this respect, the Committee considers that such a definition of serious and inexcusable fault would not appear to assimilate it in all cases to wilful misconduct within the meaning of *Article 69(f)* of the Convention, since the above concept of serious and inexcusable fault would not necessarily appear to take into account the intention of the author of the act. Furthermore, the application of this case-law in the various cases supplied by the Government shows that, in certain cases, serious but not intentional fault has resulted in the disqualification of the accident for the purposes of compensation.

The Committee therefore hopes that the Government will be able to re-examine the matter in the light of the above comments when preparing the regulations to be issued under Act No. 100/97 of 1997 establishing the new legal framework for employment injury and occupational diseases so as to limit the suspension of the benefits due in the event of employment injury to cases of wilful misconduct, in accordance with this provision of the Convention.

3. *Part VII (Family benefit), Article 43.* In its previous comments, the Committee noted that section 15 of Legislative Decree No. 133-B/97 establishing the legal framework for family benefit under the general social security scheme makes entitlement to family benefit, with the exception of beneficiaries of pensions, conditional on the completion of a qualifying period of six months' wages, received either on a continuous or interrupted basis, in the 12 months preceding the second month prior to the application. In view of the fact that, under the terms of *Article 43*, the qualifying period must not exceed three months of contribution or employment, or one year of residence during the prescribed period, the Committee requested the Government to indicate the measures which have been taken or are envisaged to give full effect to this provision of the Convention. In its reply, the Government recognizes that the qualifying period set out in section 15 of the above Legislative Decree is not in accordance with the Convention and states that the legal framework of family benefit, which is under review, will be improved, including the issue of the qualifying period. For its part, the CGTP-IN states that this qualifying period is in manifest violation of the provisions of *Article 43* and constitutes a retrogression in relation to the previous scheme, which did not set any qualifying period. The Committee therefore hopes that the appropriate measures will be taken in the near future to bring the national law and practice into full conformity with the Convention on this important point.

[The Government is asked to report in detail in 1999.]

United Kingdom (ratification: 1954)

With reference to its previous comments, the Committee notes the information provided by the Government in the reports on Conventions Nos. 102 and 44. It also notes the new comments on the application of the Convention by the Trade Unions Congress (TUC) received by the Office on 9 November 1998.

With respect to *Part IV (Unemployment benefit)*, the TUC draws attention to the fact that, according to the statistics given in the Government's report, a man with a dependant wife and two children, who is not entitled to a means-tested jobseeker's allowance which amounts to 71.89 per cent of the standard wage plus family benefit, would receive contributory jobseeker's allowance worth only 41 per cent of the standard wage plus family benefit. The contributory jobseeker's allowance is below the Convention's minimum standards (45 per cent of the reference wage for a standard beneficiary). According to the TUC, there are several reasons why such a man might not be entitled to means-tested jobseeker's allowance. In particular, a worker who has been made redundant, and who has received £8,000 or more in compensation, would not be entitled to a means-tested allowance. For a person aged under 25 the situation would be worse, as he would receive a lower rate of benefit.

The Committee notes that, according to the information provided by the Government, the rules for the calculation of the income-based jobseeker's allowance, in most cases, are identical to those for income support. The amount of the income-based allowance varies depending on the age of the claimant and whether he or she is single or has a partner and children, and, where appropriate, mortgage interest payments. If the claimant has other income, benefit will in most cases be reduced by the amount of that income. It will also be reduced if the claimant has capital between £3,000 and £8,000. The Government adds that there will be no entitlement if this capital exceeds £8,000 or if the claimant's partner works 24 hours a week or more. The Committee notes in this respect that, according to section 12 of the Jobseekers Act 1995, in relation to a claim for jobseeker's allowance, the income and capital of a person shall be calculated or estimated in accordance with prescribed rules and that circumstances may be prescribed in which

(a) a person is treated as possessing capital or income which he does not possess; (b) capital or income which a person does possess is to be disregarded; (c) income is to be treated as capital; (d) capital is to be treated as income. Section 13 of the Act further stipulates that no person shall be entitled to an income-based jobseeker's allowance if his capital, or a prescribed part of it, exceeds the prescribed amount, and that the income and capital of any member of the claimant's family shall be treated as the income and capital of the claimant. Detailed provisions implementing the above sections of the Act are included in the Jobseeker's Allowance Regulations 1996.

The Committee recalls in this respect that *Article 67 read in conjunction with Article 22, paragraph 2, of the Convention* allows the reduction of unemployment benefit where the beneficiary or his family has financial means under certain conditions. In particular, *Article 67* provides that the rate of the benefit, which shall be determined according to a prescribed scale, may be reduced only to the extent by which the other means of the family of the beneficiary exceed *substantial amounts* prescribed by the legislation or fixed by the public authorities, so that the beneficiary should be allowed to have a reasonable amount of means of his own other than unemployment benefit. The total of the benefit and any other means after deduction of the substantial amounts shall be sufficient to maintain the family of the beneficiary in health and decency and shall not be less than the benefit calculated in accordance with *Article 66* (45 per cent of the reference wage taking account of the family allowance paid during the employment and the contingency). In view of the complexity of the legislation and of the Government's statement under Convention No. 44 that in most cases benefit is reduced by the amount of any additional income of the claimant, the Committee would like the Government to supply full information on the manner in which the rules for the calculation of the income-based jobseeker's allowance take into account these provisions of the Convention and, in particular, the requirement that the reduction of the benefit is only authorized when the means of the beneficiary and his family exceed the substantial amounts referred to above. Please also supply the information requested under *Article 67*, Titles I and II, and *Article 76*, Title IV, by the report form of the Convention together with statistics on the number of persons receiving the income-based jobseeker's allowance. Furthermore, it would also like the Government to provide statistics on the level of this allowance for claimants under 25 years of age, taking into account that the income-based jobseeker's allowance varies depending on the age of the claimant, as well as to explain how the protection guaranteed by the Convention is ensured with respect of a claimant whose partner, while working 24 hours a week or more, receive wages which are below the level of the substantial amounts and the benefit calculated under *Article 67* of the Convention. In addition, the Committee wishes to be informed of any measure taken by the Government to increase the level of the contribution-based jobseeker's allowance. Finally, noting the Government's intention to introduce a national minimum wage as soon as convenient and to make corresponding modifications in the jobseekers' legislation, it expresses the hope that the Government would provide information on any progress achieved in this respect.

The Committee raises a number of other points in a request addressed directly to the Government.

[The Government is asked to report in detail in 2000.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Croatia, Libyan Arab Jamahiriya, Peru, Portugal, Senegal, Slovakia, United Kingdom.*

Convention No. 103: Maternity Protection (Revised), 1952

Austria (ratification: 1969)

Article 6 of the Convention. (a) The Committee notes with interest the adoption of the amendment to the Agricultural Labour Act which suspends the termination of temporary employment contracts for pregnant women, unless the temporary nature of the contract is objectively justified or provided for by law, thereby giving better effect to the provisions of the Convention for this category of women workers.

(b) In its previous comments, the Committee noted that sections 10 and 12 of the Federal Maternity Protection Act and section 75 of the Federal Agricultural Labour Act, under certain circumstances, authorize the dismissal of women who are pregnant and following confinement, subject to the consent of the judicial authorities. The Committee notes the information supplied by the Government in its report, which does not however contain new elements which modify the situation. The Committee is therefore bound to raise the matter once again by recalling that the above legal provisions, even though they cover a period of protection that is longer than the periods covered by the Convention and offer certain guarantees against the abusive dismissal of women workers during pregnancy and following confinement, are not in themselves sufficient to give full effect to this provision of the Convention. In fact, *Article 6* of the Convention prohibits the employer from giving notice of dismissal to a woman while she is absent from work on maternity leave or at such time that the notice would expire during such absence, but does not refer to the possibility of authorizing dismissal in certain specific or exceptional circumstances on the grounds that the national legislation considers to be legitimate. Moreover, the Committee does not consider that this prohibition, the principal objective of which is to provide women with employment security and to prevent any discrimination on grounds of maternity, has the effect of obliging an employer who ceases certain activities or has grounds to justify the dismissal of a woman who is pregnant or on maternity leave to maintain her contract of employment, but just to extend the statutory length of notice by the additional period that is necessary to complete the period of protection envisaged in the Convention. The Committee therefore hopes that the Government will be able to take the necessary measures to bring its legislation into full conformity with the provisions of the Convention. It also requests the Government to state whether women who are dismissed under the above provisions of the Maternity Protection Act and the Agricultural Labour Act may nevertheless receive the maternity benefit guaranteed by the Convention.

Ecuador (ratification: 1962)

The Committee notes the information provided by the Government in its last report according to which no legislative reform has been undertaken in response to the Committee's previous comments. Therefore, it is bound to draw the Government's attention once again to its previous comments.

1. *Article 3, paragraph 4, of the Convention.* The Committee once again hopes that the Government will take all the necessary measures to include in the Labour Code provisions explicitly providing that in the event of a late confinement, the leave before the presumed date of confinement shall be extended until the actual date of confinement and the period of compulsory leave to be taken after confinement shall not be reduced on that account, in accordance with this particular provision of the Convention.

2. *Article 5, paragraphs 1 and 2.* In its earlier comments, the Committee had noted that, as a result of the revision of section 156 of the Labour Code by Act No. 133

of 1991, the provision authorizing a mother working in an enterprise of 50 or more workers to interrupt her work in order to nurse her child was abolished. In this regard, the Committee again draws the Government's attention to the need to introduce into legislation a provision expressly providing for nursing breaks for women working in such enterprises, in accordance with *Article 5, paragraph 1,* of the Convention. Furthermore, the Committee trusts that, in determining the length of such nursing breaks, the Government will take account of the real needs of mothers and children. (In this regard, the Committee draws the Government's attention to the fact that the 15-minute breaks provided for under the old paragraph 2 of section 156 of the Labour Code, which has been repealed, seem too short.)

3. The Committee notes that the Government's report provides no information on the coverage of the social security scheme and that the statistics that had been promised have not been received by the ILO. Under these circumstances, the Committee is bound once again to request the Government to provide in its next report statistics on the number of women workers employed in industrial undertakings or in non-industrial and agricultural employment who are covered by the compulsory insurance system or by the peasants social insurance schemes as a proportion of the total of number of women workers (including women wage- earners working at home). The Committee also hopes that the Government will be able to provide information on any new extension of the social insurance scheme in order to extend coverage to all the categories of women workers referred to *Article 1* of the Convention.

Libyan Arab Jamahiriya (ratification: 1975)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1 of the Convention* (Scope). In its previous comments, the Committee noted that under section 1 of the Labour Code, the scope of the Code and, consequently, the provisions of the Code restricting maternity protection, do not extend to the following workers, who are nevertheless covered by the Convention: domestic workers and persons in similar categories, women engaged in stock raising and agriculture (except those who work in enterprises processing agricultural products or repairing machinery necessary for agriculture), and permanent or temporary public officials working in state administrations and public bodies. The Committee also noted that some of these categories of women workers will be covered by special regulations. The Committee asks the Government to supply copies of such regulations, if any, and to indicate how these workers enjoy the protection provided for by the Convention under *Article 3* (Maternity leave), *Article 5* (Nursing periods) and *Article 6* (Prohibition of dismissal).
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> *Article 2.* Under section 5 of the Registration, Contributions and Inspection Regulations of 1982, registration under social security for non-Libyan officials is on a voluntary basis unless there is an agreement concluded with the country of which these workers are nationals. Please indicate the number of non-Libyan female officials and the number of them who are registered under social security, if any.
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> *Article 3, paragraphs 2, 3 and 4* (Length of maternity leave). In answer to the Committee's previous comments, the Government indicates that section 43 of the Labour Code of 1970, which provides for a total of 50 days' prenatal and postnatal maternity leave, is to be considered as having been implicitly repealed following the adoption of section 25 of the 1980 Social Security Act, under which women workers are entitled to maternity benefit for a period of three months. The Committee notes this statement. Since section 25 of the Social Security Act concerns the payment of benefits to women workers in the event of the birth of a child, and not the maternity leave itself which is dealt with in section 43 of the Labour Code, the Committee trusts that the Government will have no difficulties in amending

above-mentioned section 43 in order to bring it into conformity with the provisions of the Social Security Act and *Article 3 of the Convention*, which provides for a minimum of 12 weeks' maternity leave, of which six weeks at least must be taken after confinement. The Committee recalls in this connection that, in its previous report, the Government stated that the tripartite committee established under the decision of the secretary of the Public Service People's Committee recommended to the General People's Committee that, in particular, section 43 of the Labour Code should be amended to bring it into conformity with *Article 3 of the Convention*. It hopes that, in making the above amendment, the Government will also take the following points into consideration:

(a) the Committee recalls that section 43 of the Labour Code makes the granting of maternity leave conditional upon the completion of a qualifying period of six consecutive months of service with an employer, which is contrary to the Convention. In its last report, the Government indicates that under section 25 of the Social Security Act, the implementing regulations fix a qualifying period of four months' contributions for entitlement to maternity cash benefits. It adds that such a qualifying period is necessary to avoid abuse and that it is in conformity with Article 4, paragraph 4, of the Convention. While noting this information, the Committee wishes to point out that its comments concerned not the contribution requirements for entitlement to maternity benefit fixed by the Social Security Act, but the six months' qualifying period provided for in section 43 of the Labour Code for the grant of maternity leave. Since the Convention does not allow any such requirement for entitlement to leave, the Committee hopes that it will be removed from the legislation when section 43 of the Labour Code is amended;

(b) the Committee again recalls that section 43 of the Labour Code does not provide, as does *Article 3, paragraph 4, of the Convention*, that where confinement occurs after the presumed date, prenatal leave must in all cases be extended to the actual date of the confinement, and that the period of compulsory leave to be taken after confinement shall not be reduced on that account. The Committee hopes that it will be possible in the near future to amend section 43 of the Labour Code by including a provision to this effect.

Article 4, paragraphs 1, 4 and 8 (Cash benefits). (a) In accordance with the last paragraph of section 25 of the Social Security Act (No. 13) and section 43 of the Labour Code, the maternity benefits provided for women workers, other than self-employed women workers, appear to be the responsibility of the employer. Furthermore, in its report, the Government indicates that the regulations to specify the conditions, rules and guarantees with regard to the provision of maternity benefits, inter alia, which are to be adopted, will include a provision prescribing that the social security fund will pay the benefits to insured women who are entitled to them in cases where the employer is unable to do so, and that the fund reserves the right to claim reimbursement from the employer of the amounts it has paid out, whenever possible. The Committee recalls in this connection that the Convention, in *Article 4, paragraphs 4 and 8*, provides that maternity benefits shall be provided either by means of compulsory social insurance or by means of public funds, and that in no case shall the employer be individually liable for the cost of such benefits due to women employed by him. The Committee therefore hopes that the Government will be able to re-examine the question in the light of the provisions of the Convention and that it will be able to indicate the measures taken or under consideration to ensure that full effect is given to the Convention on this point.

(b) Since section 25 of Social Security Act No. 13 of 1980 does not contain provisions on the subject, the Committee hopes that the regulations issued under the above Social Security Act will expressly provide that in the event of the extension of the length of maternity leave in the circumstances envisaged in *Article 3, paragraph 4, of the Convention* (error in the presumed date of confinement), the period during which the maternity benefit is provided will be extended for an equivalent period.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Netherlands (ratification: 1981)

1. *Article 4, paragraph 3, of the Convention.* With reference to its earlier comments, the Committee notes with interest the Government's statement to the effect that the provisions requiring insured persons to pay a proportion of the cost of maternity care provided in hospitals or maternity homes have been repealed. In this connection, the Committee notes with satisfaction that in order to bring legislation into conformity with the provisions of Convention No. 103, the Regulation of the Minister of Health, Welfare and Sport of 4 December 1995 (VMP/VA-954221) repeals article 3(a) of the Decree on Hospital Care covered by the Compulsory Health Insurance Scheme (*Besluit ziekenhuisverpleging*). This is confirmed by the ruling of the Court of Appeal on 29 May 1996 which recalls that the provisions of Conventions Nos. 102 and 103 are directly applicable in domestic law.

2. *Article 5, paragraph 2.* With reference to its previous comments, the Committee notes with satisfaction that under the terms of section 4(8) of the Hours of Work Act of 23 November 1995, nursing breaks are counted as working time and paid accordingly, in accordance with this provision of the Convention.

Spain (ratification: 1965)

1. The Committee takes note of the information provided by the Government in its last report and in particular the information concerning *Article 4, paragraphs 3 and 8, of the Convention*. The Committee also notes with interest a number of measures to strengthen maternity protection mentioned by the Government in its report. The Committee also takes note of the observations communicated by the General Union of Workers (UGT) on 22 January 1998.

2. *Domestic workers (Articles 3, 4, 5 and 6 of the Convention).* In its previous comments, the Committee had recalled that under section 10(2) of Royal Decree No. 1424/1985, an employer can end an employment contract of a domestic worker before the expiration of the agreed term of service by "renunciation". The Committee had noted the comments made by the General Union of Workers to the effect that employers have recourse to the "renunciation" procedure as soon as they learn that the employee in question is pregnant. The Committee therefore had drawn the Government's attention to the use made of this procedure which in practice could result in depriving domestic workers of the protection provided by the Convention. In its report, the Government indicates that the system of maternity protection, which includes leave, maternity benefits and nursing breaks, also applies to women in domestic service. Thus, if an employment contract is broken at a time when the worker is on maternity leave, she continues to receive her maternity benefits until the end of the period of leave; this provision applies equally to domestic workers. The Government also indicates that "renunciation" by an employer cannot in practice deprive women in domestic service of the protection provided by the Convention since, under Spanish law, "renunciation" by an employer may only take effect after the compulsory period of maternity leave.

The Committee takes note of this information. It recalls that its previous comments did not concern "renunciation" by an employer during the worker's period of maternity leave, but rather, the use of this procedure to circumvent the rules on maternity protection provided by the Convention, inasmuch as the employer may use the "renunciation" procedure as soon as he learns of the worker's pregnancy and thus deprive her of any protection including protection against dismissal. Under these circumstances, and given that such a procedure is in breach of European Community law, namely the Equal Treatment Directive 76/207, 9 February 1972, and the Pregnant Workers' Directive

92/85, 19 October 1992, the Committee hopes that the Government will re-examine the question and indicate the measures taken or contemplated to combat the abuses mentioned and ensure that the protective provisions of the Convention cannot be circumvented in the case of domestic workers. The Committee also requests the Government to indicate whether any judicial decisions have been handed down on this matter.

3. *Article 6.* With reference to the Committee's earlier comments, the Government indicates that Act 42/1994 concerning fiscal, administrative and social measures introduced into the revised text of the General Social Security Law, section 133bis, under which maternity and adoption in particular, which had previously come under temporary incapacity for work, are now expressly protected in their own right. The Government also refers to the new provisions in section 55(5) of the General Conditions for Workers, under which any dismissal is null and void if it is based on any of the grounds for discrimination prohibited by the Constitution or legislation, or violates the workers' fundamental rights and public freedoms. The Government therefore considers that, through this general protection against any grounds for discrimination, maternity enjoys a particular protection by virtue of the prohibition of any form of discrimination based on sex (article 14 of the Constitution) and by virtue of the prohibition of discrimination in employment on grounds of sex (section 17 of the General Conditions for Workers). In this regard, the Government refers to a number of decisions by the Constitutional Court to the effect that "discrimination on grounds of sex covers not only inequalities in treatment based on the mere fact of the sex of the person discriminated against, but also those inequalities in treatment based on the combination of conditions or circumstances directly and unequivocally linked to the person's sex; this is the case with pregnancy, a differentiating factor which, for obvious reasons, only affects women".

The Committee takes note of this information. It has also noted the comments made by the UGT to the effect that urgent positive action should be undertaken to prevent discrimination against women in access to employment and in concealed dismissals. The Committee recalls that, under *Article 6* of the Convention, when a woman is absent from work on maternity leave as provided for by the Convention, it is unlawful for the employer to give her notice of dismissal during such absence, or to give her notice of dismissal at such a time that the notice would expire during such absence. In this regard, the Committee notes that according to certain judgements communicated by the Government, dismissals of women employees have been declared null and void by the Constitutional Court because the Court had concluded in these particular cases that discriminatory treatment on grounds of sex had taken place. Nevertheless, it would still appear to be the case that women employees dismissed during their pregnancy or following confinement, in accordance with the provisions of the General Conditions for Workers in the context of collective dismissals or dismissals for objective reasons — which as such do not involve discrimination — do not enjoy the protection provided by section 55(5) of the General Conditions for Workers. Under these circumstances, the Committee hopes that the Government will re-examine this question in the light of the above comments and that it will indicate the measures taken or contemplated to introduce in its national legislation a provision giving express effect to *Article 6* of the Convention.

4. In its observations, the UGT, while acknowledging certain positive developments in the area of maternity protection, considers that women who work part time or intermittently can legally be excluded from the maternity protection provisions; according to the UGT, women in these situations are required to have worked for a minimum of 12 months before becoming entitled to social security benefits. The Committee hopes that the Government's next report will contain information on this point and on the possibility for

these women of receiving benefits from the public assistance fund, in accordance with *Article 4, paragraph 8,* of the Convention.

Sri Lanka (ratification: 1993)

1. In its previous comments, the Committee had drawn the Government's attention to the application of the Convention with regard to female plantation workers and in particular the system of alternative maternity benefits which were the subject of comments made by the Lanka Jathika Estate Workers Union (LJEWU). In its last report, the Government states that female plantation workers receive benefits guaranteed under Ordinance No. 32 of 1939 respecting maternity benefits. The Committee notes that section 5(3) of this Ordinance enables certain employers to provide alternative benefits to women workers employed on their estate, upon receipt of a written certificate from the Commissioner confirming that structures offering such benefits are in place. These benefits are provided to female workers who are resident on these estates as well as to non-resident employees who have expressed their wish to receive such benefits. Women employed on these estates who refuse alternative benefits are denied the right to maternity benefits granted to other female workers under Ordinance No. 32 (section 5(4) of this Ordinance). In this regard, the Committee recalls that, according to the observations communicated by the LJEWU, female plantation workers who receive alternative benefits are victims of discrimination since, on the one hand, the medical benefits provided by the medical centres in these plantations are of a lesser quality and, on the other hand, their cash benefits are less than those received by other female workers. Moreover, the trade union's opinion is that the system of alternative benefits is now out of date and obsolete in the respect that the improvements and the progress made in the national health system enables quality medical care to be provided in the specialized services of national hospitals and private medica centres which are accessible to female workers in rural zones. Finally, the Committee notes the information provided by the Government in its last report to the effect that cash benefits paid to female workers within the framework of the alternative benefit system is equivalent to 4/7 of the 6/7 of their former salary which is less than 49 per cent of their previous earnings.

In this respect, the Committee draws the Government's attention to the fact that the granting of alternative benefits shall in no way deprive the female worker of her right to sufficient cash benefits for the full and healthy maintenance of herself and her child in accordance with a suitable standard of living, in conformity with *Article 4, paragraph 2, of the Convention*. Moreover, the Committee recalls that under *Article 4, paragraph 6,* where cash benefits are based on previous earnings, they should be at a rate of not less than two-thirds of these previous earnings. The Committee also recalls that, under *Article 4, paragraph 3,* medical benefits shall include pre-natal, confinement and post-natal care by qualified midwives or medical practitioners as well as hospitalization care where necessary. Consequently the Committee would be grateful if the Government would indicate the measures taken or envisaged to amend the relevant provisions of the Ordinance respecting maternity benefits to ensure that all female workers covered by the Convention receive cash benefits as well as medical care at the level and for the duration provided for in the Convention.

2. *Article 3, paragraphs 2 and 3.* The Government indicates in its report that the period of maternity leave is 12 weeks. Nevertheless, it adds that such leave is only granted for the first two confinements. In the case of a third confinement (as well as in the event of a still birth) the female worker is entitled to only six weeks' maternity leave. The Committee recalls that under *Article 3, paragraphs 2 and 3,* of the Convention, the period

of maternity leave shall be at least 12 weeks, of which six weeks must be taken following confinement *irrespective of the number of confinements*. The Committee hopes that the Government will indicate in its next report the measures taken or envisaged to ensure the full application of these provisions of the Convention to all female workers who are covered by this instrument.

3. The Committee notes that the maternity benefits Ordinance is not extended to female employees who work in shops or offices (section 21 of the Ordinance). Consequently, the Committee would be grateful if the Government would provide a copy of the text of Act No. 19 of 1954 respecting shop and office employees, in its amended version. The Committee emphasizes the need to submit a current version of this legislation, since the Government states that female workers are entitled to 12 weeks' maternity leave whereas, the version of the Act of 1954 made available to the Office provides that these employees are only entitled to 42 days of maternity leave (14 days prior to and 28 days following confinement).

The Committee would also be grateful if the Government would provide a copy of the legislation which is applied to female employees in the public sector (Chapter XII, section 18 of the Establishment Code).

With regard to Ordinance No. 32 of 1939 respecting maternity benefits, the text available to the Office includes amendments adopted up to and including 1985. The Committee again requests the Government to provide a copy of the text of this Ordinance in the current version as well as any Regulation and, in particular, the Regulation referred to under section 5(1) of Ordinance No. 32 which lays down the rate of cash benefits to be paid.

The Committee reserves the right to examine in greater detail the legislative texts in force as soon as they are made available to the Committee.

4. Moreover the Committee again requests the Government to provide a copy of the observations made by the Employers' Federation of Ceylon and the Ceylon Workers' Congress referred to in its first report.

[The Government is asked to report in detail in 1999.]

Zambia (ratification: 1979)

The Committee notes the information provided by the Government in reply to its earlier comments concerning *Articles 2, 3, 4, 5 and 6 of the Convention*. It notes that, with regard to most of the points which it has been raising for many years, no progress has been made. Under these circumstances, the Committee is bound to take up the matter again in a new request which it is addressing directly to the Government.

[The Government is asked to report in detail in 2000.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Croatia, Ghana, Greece, Netherlands, Poland, Sri Lanka, Zambia*.

Convention No. 105: Abolition of Forced Labour, 1957

Afghanistan (ratification: 1963)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1(a) of the Convention.* In comments made for a number of years, the Committee has noted that prison sentences involving an obligation to perform labour may be imposed under the following provisions of the Penal Code:
>
> (a) sections 184(3), 197(1)(a) and 240 concerning, inter alia, the publication and propagation of news, information, false or self-interested statements, biased or inciting propaganda concerning internal affairs of the country which reduces the prestige and standing of the State, or for the purpose of harming public interest and goods;
>
> (b) sections 221(1), (4) and (5) concerning a person who creates, establishes, organizes or administers an organization under the name of a party, society, union or group with the aim of disturbing and nullifying one of the basic and accepted national values in the political, social, economic or cultural spheres of the State, or makes propaganda for its extension or attraction to it, by whatever means it may be, or who joins such an organization or establishes relations, himself or through someone else with such an organization or one of its branches.
>
> The Committee had noted the Government's earlier indication that the obligation to perform prison labour provided for under section 3 of the Prisons Law covers persons convicted under the above-mentioned sections of the Penal Code as well as those convicted of other misdemeanours and crimes; under section 13 of the Prisons Law, those convicted under the above-mentioned sections of the Penal Code are kept in custody separately from ordinary prisoners, and are also engaged in different activities to keep themselves physically healthy and to provide themselves with gainful employment for which they are fully paid.
>
> While noting the special status given to prisoners convicted under the above-mentioned sections of the Penal Code, the Committee pointed out that the imposition of sanctions involving compulsory labour on these persons remains contrary to the Convention.
>
> The Committee hopes that the penal provisions will be examined in the light of the Convention with a view to ensuring that no sanctions involving forced or compulsory labour may be imposed as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system and that the Government will indicate the measures taken to this end.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Algeria (ratification: 1969)

Article 1(a) of the Convention. The Committee notes the Government's report.

1. The Committee refers to its previous comments and notes that section 5 of Act No. 90-31 respecting associations invalidates the legal status of an association whose objectives are contrary to the established system, to public order, good morals or the laws and regulations in force. Section 45 provides that any individual who directs, administers or agitates in an association that has not been recognized, or that has been suspended or dissolved, or who facilitates meetings of the members of such an association shall be punished by a term of imprisonment ranging from three months to two years, including the obligation to work, under sections 2 and 3 of the Interministerial Order of 26 June 1983. The Committee recalls that the Convention prohibits the use of any form of forced or compulsory labour as a means of political coercion or education or as a punishment for

holding or expressing political views or views ideologically opposed to the established political, social or economic system.

2. The Committee notes the Government's statement to the effect that the legislation in force makes no distinction between a crime that is political or civil, and that all prisoners who are incarcerated have been sentenced and punished for crimes committed under the criminal law. The Committee emphasizes that, where there is an obligation to prison labour such as provided for by the Ministerial Decree for a person sentenced under Act No. 90-31, concerning an association whose objectives are to express political views or views ideologically opposed to the established order, and would in this respect be considered as contrary to the established system, public order, good morals, or the laws and regulations in force as provided for by the provisions of the Act, such work would be prohibited by the Convention and therefore inadmissible. The Committee again requests the Government to take the necessary measures to ensure observance of the Convention, by amending the effects of the legislation, for example, by exempting from prison labour persons who are sentenced for offences in respect of freedom of opinion or expression or for political offences.

3. The Committee had also requested the Government to provide information on the application, in practice, of Act No. 89-11 respecting political associations, in particular, sections 3, 5 and 6, as well as sections 5 and 45 of Act No. 90-31 respecting associations. The Committee requests the Government to provide information on any judgements handed down in application of the above provisions and to provide a copy of the texts.

Bahamas (ratification: 1976)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore return to its previous observation on the following matters:

Article 1(c) and (d) of the Convention. In comments made for a number of years, the Committee has referred to sections 128, 130 and 134 of the 1976 Merchant Shipping Act, under which various breaches of labour discipline are punishable with imprisonment (involving an obligation to work) and deserting seafarers may be forcibly returned on board ship; and sections 72 and 73 of the Industrial Relations Act, under which participation in a strike is punishable with imprisonment, involving an obligation to perform labour. The Government has supplied no information concerning amendment of the legislation. The Committee hopes that the necessary measures will be taken, and that the Government will soon be in a position to report concrete action to amend or repeal the above-mentioned provisions. The Committee is once again addressing a more detailed request on the matter directly to the Government.

Belize (ratification: 1983)

The Committee notes that the Government's report contains no reply to its previous observation.

Article 1(c) and (d) of the Convention. In comments made for a number of years, the Committee has referred to section 35(2) of the Trade Unions Act (Ch. 238), under which a penalty of imprisonment (involving, by virtue of section 66 of the Prison Rules, an obligation to work) may be imposed on any person employed by the Government, municipal authority or any employer in charge of supplying electricity, water, railway, health, sanitary or medical services or communications or any other service that may by proclamation be declared by the Governor to be a public service, if such person wilfully and maliciously breaks a contract of service, knowing or having reasonable cause to believe that the probable consequences will be to cause injury or danger or grave inconvenience to the community. The Committee has also noted that, in pursuance of section 2 of the Settlement of Disputes Essential Services Act (Ch. 235), Statutory Instrument No. 92 of 1981 declared the National Fire Service, Postal Service, Monetary and Financial Services (banks, treasury, monetary authority), Airports (civil aviation and airport security services) and the Port Authority (pilots and security services) to be essential services; Statutory Instrument No. 51 of 1988 declared the Social Security Scheme administered by the Social Security Branch an essential service; and Statutory Instrument No. 32 of 1984 declared Revenue Services, including all Revenue Collecting Departments and Agencies of the Government to be essential services.

The Committee noted from the Government's 1994 report that there have been no steps to bring section 35(2) of the Trade Unions Act into conformity with the requirements of the Convention. It recalls that under the Convention, legislation providing for sanctions involving compulsory labour as a punishment for violations of labour discipline or for having participated in strikes must be repealed. It refers also to the explanations in paragraphs 110, 114 to 116 and 123 of its General Survey of 1979 on the abolition of forced labour. Whilst it notes that there are no recorded penalties of imprisonment imposed under section 35(2), the Committee again expresses the hope that the necessary measures will be taken to bring section 35(2), as well as actual practice, into conformity with the Convention and that meanwhile the Government will provide information on its application in practice, including any cases in which penalties of imprisonment have been imposed under it.

Benin (ratification: 1961)

Article 1(a) of the Convention. In its previous comments the Committee noted that the provisions of Act No. 60-12 of 30 June 1962 on the freedom of the press provides for sentences of imprisonment involving compulsory labour for certain acts or activities related to the exercise of the right of expression. The Committee referred in this connection to the following provisions: section 8 (deposit of the publication with the authorities before its circulation to the public); section 12 (permitting a ban on publications of foreign origin printed either inside or outside the country in French or in the vernacular); section 20 (incitement to commit an act classified as an offence); section 23 (causing offence to the Prime Minister); section 25 (publishing false reports); and sections 26 and 27 (slander and insults). However, the Government indicated in its previous report received in September 1997 that a Bill on freedom of information and communication had been drafted but that the Bill has been resubmitted to the National Assembly for reasons of non-conformity with the Constitution. The Committee therefore reiterates its hope that the Bill on freedom of information and communication will shortly be adopted and that it will guarantee that no term of imprisonment including compulsory labour can be imposed as a sanction for acts or activities related to the exercise of the right of expression.

Brazil (ratification: 1965)

The Committee refers to the comments made on the application of Convention No. 29.

Cameroon (ratification: 1962)

Article 1(a) of the Convention. The Committee has noted the Government's brief reply to its last observation. The matters raised concerned sections 111, 113, 116, 154 and 157 of the Penal Code, and Act No. 90-53 relating to freedom of association: those provisions define offences connected with the expression of political views or views ideologically opposed to the established political, social or economic system, and under sections 18 and 24 of the Penal Code they may give rise to sentences of imprisonment with compulsory labour. The Committee referred to the explanations in paragraphs 102 to 109 of the General Survey of 1979 on the abolition of forced labour, as to the incompatibility with the Convention which results from these provisions.

The Committee notes the Government's indication that there has been no use of forced labour for the expression of ideological opposition to the political system, and that many political parties now operate in Cameroon. It would nevertheless refer further to paragraphs 133 to 140 of the General Survey, regarding the politically coercive effect of the mere possibility of forced labour being imposed in cases such as those mentioned here. It would be glad if the Government would take early steps to ensure the Convention is observed on this point, pending which the Government will no doubt wish to continue indicating whether any use has been made of the provisions cited.

Central African Republic (ratification: 1964)

The Committee notes the Government's report.

Article 1(a) of the Convention. In its previous comments, the Committee drew the Government's attention to the provisions of Act No. 60/169 (dissemination of prohibited publications) and of Order No. 3-MI of 25 April 1969 (dissemination of periodicals or news that has not been approved by the censorship authority) which provides for terms of imprisonment — including compulsory work — for the expression of political opinions. It noted with interest the entry into force in 1995 of the new Constitution which guarantees freedom of the press (article 13) and asked the Government to indicate whether Act No. 60/169 and Order No. 3-MI had been repealed or amended.

The Committee notes that the last report of the Government, which was received in 1997, contained no reply on this point. However, it notes the information according to which persons who express political opinions or their ideological opposition to the established political, social or economic order cannot be compelled to do forced or compulsory labour under the terms of the new Constitution of 14 January 1995.

The Committee hopes that the Government in its next report will state whether Act No. 60/169 and Order No. 3-MI have been amended or repealed and that it will communicate, as appropriate, a copy of any new provisions that have been adopted.

Chad (ratification: 1961)

The Committee takes note of the Government's brief report.

Article 1(d) of the Convention. In its comments since 1978, the Committee has referred to Ordinance No. 30/CSM of 26 November 1975, and Act No. 15 of 13 December 1959, under which participation in strikes is punishable by imprisonment involving forced labour. The Committee has also noted the adoption of the Decree of 1 May 1994 respecting the right to strike and the settlement of collective disputes. It reiterates its request to the Government to provide a copy of the Decree, and to provide full information on measures taken or proposed to amend the legislation as a whole so as to ensure that forced labour is not imposed as punishment for having participated in strikes in contravention of the Convention.

Article 1(a). The Committee recalls also its earlier observation on Act No. 35 of 8 January 1960 respecting subversive texts. It hopes the Government will indicate the measures taken or proposed to ensure that forced labour is not imposed in contravention of the Convention for expressing political views, and that it will provide full information in this regard.

Colombia (ratification: 1963)

Further to its earlier comments, the Committee notes the information in the Government's report.

Article 1(d) of the Convention. 1. The Committee noted previously that, according to certain information, various provisions of the Penal Code could be applied to workers participating in strikes (in particular sections 164, 187, 276, 290, 291, 313, 370; and section 5 read in conjunction with sections 2 and 3 of Act No. 23 of 1991). The penalties provided under these provisions are imprisonment for a period ranging from six months to six years, depending on the particular provision applied. The Committee also noted that section 79 of the Prisons Code (Act No. 65 of 1993) requires convicts to do compulsory labour. The Committee asked the Government to consider measures to prevent sentences involving compulsory work from being imposed for participation in strikes.

2. The Committee takes note of the Government's explanation in this regard to the effect that there are no penalties for exercising the right to strike. The right to strike is expressly guaranteed in the Constitution, and consequently, no legal provision empowers any judge to pass judgement on or sentence anyone for participation in a strike, and strikes cannot be an offence under any law. The Government therefore does not plan to take any action, since it does not see any need to provide for exceptions to a general rule which does not exist.

3. While noting this information, the Committee observes that the issue of strikes raises many problems, in particular with regard to Convention No. 87. The Committee invites the Government to re-examine the situation in the light of *Article 1(d)* of the Convention, according to which States which have ratified the Convention undertake not to make use of any form of forced or compulsory labour as a punishment for having participated in strikes.

Cuba (ratification: 1958)

1. *Article 1(b) of the Convention.* In its previous observations, the Committee noted Act No. 75 of 21 December 1994 respecting national defence, and the information concerning section 70 of the Act respecting the procedures of recruitment commissions. This section refers to cases of deferral or exemption from active military service. According to the Government, section 70 also refers to the "call up", which is the process by which young persons are called to recruitment interviews where they are able to express their preference for various units or specialities in which they consider that they could perform their active military service. If a young person does not wish to enter the Youth Labour Army, his or her service is performed in regular military units.

2. The Committee notes this "voluntary" element in section 70 and the fact that the economic benefits (wages at rates similar to workers who perform the same activities) and the conditions of work of the members of the Youth Labour Army attract a larger number of young persons to this speciality rather than to others in the regular military service. The

Government also states that, during service in the Youth Labour Army, young persons acquire a profession or trade which prepares them for civilian life and that, when a young person is placed in the above army, account is taken of their place of residence and that the work performed is of an eminently communal nature. Furthermore, under section 67 of the National Defence Act, young persons assigned to the Youth Labour Army carry out two months of service for combat preparations in addition to the two years carried out by young persons performing regular military service.

3. The Committee recalls that, as set out in paragraphs 31 and 41 of its 1979 General Survey on the abolition of forced labour, while the existence of a choice may provide a useful safeguard, this does not in itself exclude the application of Conventions Nos. 29 and 105 when the choice between different forms of service is made within the framework and on the basis of a compulsory service obligation. The Committee recalls that States which have ratified Convention No. 105 are obliged to suppress the use of forced labour as a method of using labour for purposes of economic development. It requests the Government to provide information on the manner in which section 70 is applied in practice, including the number of persons concerned and the conditions under which they make their choices, as well as on any measure that is proposed to ensure the application of the Convention in this respect.

Cyprus (ratification: 1960)

Article 1(c) and (d) of the Convention. 1. In the comments that it has been making for many years, the Committee has noted that section 3(1) of the Supplies and Services (Transitional Powers) (Continuation) Act (Chapter 175A) authorizes the issuance of Orders to make effective Defence Regulations 79A and 79B for the purpose of so maintaining, controlling and regulating supplies and services as: (i) to secure their equitable distribution or their availability at fair prices; (ii) to promote the productivity of industry, commerce and agriculture; (iii) to foster and direct exports and reduce imports and to redress the balance of trade; and (iv) to ensure that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community. Regulation 79A authorizes the direction of any person to perform services and the requirement that persons employed in undertakings engaged in work regarded as essential for any prescribed purpose not terminate their employment or absent themselves from work or be persistently late for work, on pain of imprisonment (involving, under the Prison Regulations, the obligation to perform labour). Regulation 79B authorizes the Government to issue further regulations to prohibit strikes, on pain of imprisonment by virtue of Regulation 94.

2. In its report received in January 1998, the Government confirms its previous repeated statements that during the period under review no recourse was had to Defence Regulations 79A and 79B, which can only be applied to the extent that they are not in conflict with the Constitution of the Republic of Cyprus and namely articles 10 and 27 concerning forced labour and the right to strike respectively. Nevertheless, the Committee noted in its earlier comments that the Government had proceeded with the drafting of new legislation regulating the right to strike in essential services, which, according to the Government's latest report received in January 1998, is still being examined by the Committee of Ministers, which had several meetings during the reporting period. The Government assures the Committee once again that every effort will be made to bring the legislation into conformity with the Convention.

3. With reference to its observation addressed to the Government under Convention No. 87, the Committee expresses the hope that the list of prescribed essential services will

be limited to essential services in the strict sense of the term, and that participation in strikes will not be punishable with penalties involving compulsory labour, unless such strikes are likely to endanger the life, personal safety or health of the whole or part of the population. The Committee asks the Government to provide, in its next report, information on any progress made in this regard and to supply a copy of the new provisions as soon as they are adopted.

Ecuador (ratification: 1962)

Article 1(c) and (d) of the Convention. The Committee recalls that it has commented for many years on Decree No. 105 of 7 June 1967, under which penalties of imprisonment of two to five years can be imposed on anyone who foments or takes a leading part in a collective works stoppage. Prison sentences involve compulsory labour by virtue of sections 55 and 66 of the Penal Code. The Committee also noted previously that section 65 of the Maritime Police Code forbids crew members from disembarking in a port other than the port of embarkation, except with the agreement of the ship's master and provides that crew members who desert forfeit their pay and belongings to the vessel; if recaptured they must pay the cost of arrest and be punished in accordance with the naval regulations in force.

The Committee takes note in particular of the Government's information to the effect that a number of bills were transmitted by the Minister of Labour to the National Congress and submitted by a letter of 6 May 1998 to the President of the National Congress. The bills in question are: Bill No. II-90-154 concerning interpretation of Legislative Decree No. 105 of 7 June 1967 respecting collective labour stoppages; Bill No. II-98-158 to repeal section 165 of the Maritime Police Code and other texts relating to other international labour Conventions; and Bill No. II-90-160 concerning sections 54, 55 and 56 of the Penal Code. The Committee observes, however, that the same texts had already been submitted to the President of the Congress by the Ministry of Labour in April 1993. The Committee also notes that the preliminary draft bill to amend the Labour Code, which was prepared during the ILO technical assistance mission in September 1997, is being examined by the relevant tripartite consultative body.

The Committee hopes that the Government will provide detailed information in its next report on the progress made in the work of bringing its legislation into conformity with the Convention.

Egypt (ratification: 1958)

The Committee has noted the information supplied by the Government in its report for the period ending 30 June 1997, as well as the Government's reply to its earlier comments.

1. In its previous observation, the Committee referred to certain provisions of the Penal Code, Act No. 156 of 1960 respecting the reorganization of the press, Act No. 430 of 31 August 1955 respecting film censorship, Act No. 32 of 12 February 1964 respecting associations and private foundations, the Public Meetings Act of 1923, the Meetings Act of 1914 and Act No. 40 of 1977 respecting political parties. It pointed out that the implementation of these provisions could affect the application of *Article 1(a) of the Convention*, which prohibits forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.

The Government indicates that Act No. 148, 1980 respecting press authority, which amended Act No. 156 of 1960, has been repealed, and that Act No. 96 of 1996, on regulation of the press, has been promulgated. The Government states that the new Act provides for the independence of journalists from any intervention in the performance of their work, though they are subject to the provisions of the law, and prohibits the imposition of pre-trial detention on journalists for crimes related to publication. The Committee would be grateful if the Government would indicate, in its next report, whether Act No. 156 of 1960 has been also formally repealed, and asks the Government to supply a copy of the relevant text and also supply a copy of Act No. 96 of 1996.

The Committee reiterates its hope that the Government will re-examine the other texts referred to above concerning film censorship, associations and private foundations, public meetings and political parties, with a view to ensuring the observance of the Convention: this might be achieved by redefining the punishable offences so that no person may be punished for holding or expressing political views or views ideologically opposed to the established political, social or economic system; or by modifying the nature of the penalty, for example replacing imprisonment with fines or granting prisoners convicted of certain offences a special status under which they are exempt from prison labour imposed on common offenders, but are allowed to work on their own initiative.

2. *Article 1(d).* In its earlier comments, the Committee referred to sections 124, 124A, 124C and 374 of the Penal Code, under which strikes by any public employee may be punished with imprisonment which may involve compulsory labour. The Government indicated previously that, under section 24 of the Act concerning the organization of prisons, prisoners who are detained temporarily or who have been convicted without obligation to perform prison labour can only work when they so wish. The Government states in its latest report that section 24 is applicable to persons convicted under section 124 of the Penal Code, since the latter provides for detention and not for imprisonment. However, the Committee previously noted that all the above-mentioned sections of the Penal Code provide for imprisonment as a punishment for having participated in strikes. Thus, section 124 refers to imprisonment for a period of up to one year, which may be doubled in certain cases, as clearly indicated in the Government's latest report; the maximum penalty is two years under section 124A; sections 124 and 124A apply in conjunction with sections 124C and 374 of the Code. The Committee also noted previously that under sections 19 and 20 of the Penal Code, imprisonment with labour is imposed in all cases where persons are sentenced to imprisonment for one year or more. The Committee therefore reiterates its hope that measures will be taken in this connection to ensure the observance of the Convention. It recalls, with referring to the explanations provided in paragraph 123 of its General Survey of 1979 on the abolition of forced labour, that the imposition of penalties for participation in strikes in essential services in the strict sense of the term (that is, services whose interruption would endanger the life, personal safety or health of the whole or part of the population) fall outside the scope of the Convention. The Committee repeats its request to the Government to supply copies of any court decisions handed down under the above-mentioned provisions of the Penal Code.

3. *Article 1(c) and (d).* The Committee previously expressed the hope that measures would be taken to ensure the observance of the Convention with regard to sections 13(5) and 14 of the Maintenance of Security, Order and Discipline (Merchant Navy) Act, under which penalties of imprisonment involving compulsory labour may be imposed on seafarers who together commit repeated acts of insubordination. In this connection, the Committee recalled that *Article 1(c) and 1(d) of the Convention* prohibit the exaction of forced or compulsory labour as a means of labour discipline or as

punishment for having participated in strikes. The Committee noted that, in order to remain outside the scope of the Convention, such punishment should be linked to acts that endanger or are likely to endanger the safety of the vessel or the life of persons. The Committee observed that, under section 13(5) read together with section 14, breaches of discipline or participation in strikes may be punished with imprisonment even in circumstances where the safety of the vessel or the life and health of persons are not endangered.

While noting the Government's indications in its latest report that the term "insubordination" used in the above-mentioned sections has a technical meaning different from that of the term "strike", the Committee points out that *Article 1* prohibits the exaction of forced or compulsory labour both as a means of labour discipline and as a punishment for having participated in strikes. The Committee therefore reiterates its hope that the Government will soon be in a position to indicate that the necessary measures have been taken to ensure the observance of the Convention on this point.

4. The Committee requests the Government to supply information on a number of other points that are again dealt with in a request addressed directly to the Government.

El Salvador (ratification: 1969)

The Committee notes the Government's report.

I. *Article 1(a) of the Convention.* 1. In its previous comments, the Committee referred to a series of provisions laid down in the Penal Code, (sections 376(2) and (3), 377, 378 and 379 relative to activities in respect of anarchist doctrines or contrary to democracy; section 380 respecting subversive propaganda and 407 respecting organizations whose objective is to commit an offence) which, under section 49 of the Act respecting the organization of prisons and rehabilitation centres, provide for the imposition of penalties involving compulsory labour for activities relating to the expression of political views or opposition to the established political system, which is contrary to the provisions of the Convention. The Committee noted that Decree No. 50 of 24 February 1984, respecting the criminal procedure to be applied when constitutional guarantees have been suspended, provides that persons charged with committing an offence against the legal personality of the State are to be judged by military courts (sections 373 to 380). The Committee had noted that the Act respecting the organization of prisons and rehabilitation centres does not provide for the exemption of political prisoners from prison labour.

2. In this respect, the Committee notes the Government's statement to the effect that Decree No. 50 of 24 February 1984 respecting the criminal procedure, applied as an extraordinary measure, had been promulgated by Legislative Decree No. 776 of 16 December 1989, as amended by Legislative Decree No. 369 (*Official Gazette* No. 213 T 317 of 19.11.92) which suspended constitutional guarantees. Consequently, the Committee is of the opinion that Decree No. 50 of 24 February 1984 is fully in force and continues to take effect.

3. The Committee again requests the Government to provide information, in particular, in respect of the number of sentences pronounced by the military courts in the application of Decree No. 50 and a copy of the texts of recent judgements handed down by the courts. The Committee also requests the Government to provide a copy of the texts mentioned in the Government's report.

4. The Committee hopes that the Government will adopt the necessary measures to ensure compliance with the Convention by abolishing the restrictions in respect of freedom of association and political expression contrary to the established order,

exempting prisoners convicted under the above provisions from compulsory labour or by extending its scope to include political offences which do not involve acts of violence. The Committee would be grateful if the Government would indicate the measures to be adopted in this respect.

II. *Article 1(c) and (d).* 5. The Committee had noted that section 291 of the Penal Code enforces a prison term with compulsory labour upon any person who, without creating a collective danger, hinders, obstructs or prevents the functioning of public transport and utility services or workers employed in a service sector or an essential service in the exercise of their functions in such a manner as to interrupt or suspend, without due cause, the smooth functioning of these services.

6. The Committee now notes the Government's comments to the effect that the National Assembly is examining a Bill amending the Penal Code, under which the unauthorized interruption or obstruction of a public service referred to in section 291 of the above Act will no longer be considered an offence. The Committee hopes that the Government will adopt the necessary measures to ensure that compulsory labour may not be imposed as a punishment for having participated in strike action or disrupting labour discipline and requests the Government to provide a copy of the Bill as soon as it has been adopted.

III. The Committee had noted that a draft text respecting the organization of prisons and rehabilitation centres is being examined. The Committee also notes that the Government's report refers to a draft text respecting prison administration, under which prison labour would constitute a right and not an obligation. The Committee also notes that a Bill amending the Penal Code has been submitted to the National Assembly for examination. The Committee requests the Government to provide information in its next report in respect of developments in this regard and copies of any new text as soon as they are adopted.

A request regarding certain other points is being addressed directly to the Government.

Fiji (ratification: 1974)

Article 1(a) of the Convention. The Committee notes with satisfaction that Act No. 20 of 1995 has repealed the Sunday Observance Decree, 1989, under which it was prohibited to convene, organize or take part in an assembly — including one for the expression of views — or procession in any public place on a Sunday, subject to penalties of imprisonment (involving an obligation to work).

The Committee refers also to certain points raised in a request addressed directly to the Government.

Ghana (ratification: 1958)

The Committee notes that the Government's report contains no new information in reply to previous comments, concerning the following matters.

Article 1(a), (c) and (d) of the Convention. 1. In comments made for a considerable number of years, the Committee has referred to provisions of the Criminal Code, the Newspaper Licensing Decree, 1973, the Merchant Shipping Act, 1963, the Protection of Property (Trade Disputes) Ordinance and the Industrial Relations Act, 1965, under which imprisonment (involving an obligation to perform labour) may be imposed as a punishment for non-observance of restrictions imposed by discretionary decision of the executive on the publication of newspapers and the carrying on of associations, for various breaches of discipline in the merchant marine and for participation in certain forms of strikes. The Committee requested the Government to adopt the necessary measures in regard to these provisions to ensure that no form of forced or compulsory labour (including compulsory prison labour) might be exacted in circumstances falling within *Article 1(a), (c) or (d)* of the Convention. The Committee also requested the Government to supply information on the practical application of a number of legislative provisions.

2. In its report received in January 1994 the Government stated that the National Advisory Committee on Labour was discussing the comments of the Committee of Experts and it was the wish of the Government to bring the legislation concerned into conformity with the Convention and to inform the ILO accordingly through its next report on the subject. In its report received in 1996, the Government indicated that the National Advisory Committee on Labour concluded discussions on the Committee of Experts' previous comments and had submitted recommendations to the Minister in March 1994; the Government desired to bring local laws into conformity with ILO standards, and the comments of the Committee of Experts had been submitted to the Attorney-General for a closer study and expert comments. It was hoped that the Attorney-General's response would be received in time for incorporation in the next report. The Committee hopes that the necessary action will at last be taken on the various points which are once more recalled in detail in a request addressed directly to the Government.

3. The Committee has noted the adoption of the Political Parties Law, 1992, the Emergency Powers Act, 1994, and the Public Order Act, 1994, which give rise to a number of questions under the Convention that are also set out in the request addressed directly to the Government.

Greece (ratification: 1962)

Article 1(c) of the Convention. 1. In its previous comments, the Committee drew the Government's attention to national maritime legislation which allows penalties of imprisonment involving compulsory labour to be imposed on seafarers. The Committee referred in particular to the provisions of section 55 of the Minor Offences Code of 1967 and to sections 205, 207 paragraph 1, 208, 210 paragraph 1 and 222 of the Code of Public Maritime Law of 1973, which allow sentences involving compulsory labour to be imposed on seafarers for breaches of labour discipline, section 4, paragraph 1, of Act No. 3276 of 26 June 1944 respecting collective agreements in the merchant marine, and section 15 of Act No. 299 of 25 October 1936 respecting collective labour disputes in shipping, under which violations of a clause of a collective agreement or an executory decision concerning pay are punishable by sentences of imprisonment involving compulsory labour.

2. In its report, the Government points out that the sanctions of imprisonment provided for contraventions of sections 205, 207, 208, 210 and 222 of the Code of Public Maritime Law do not infringe the provisions of the Convention owing to the nature of the occupation and the place where it is exercised (at sea, in the merchant marine). The Government points out that, because of the particular nature of work at sea, a seafarer is under certain legal obligations which protect the rights and freedoms of other workers, safeguard public order, national security and public health and above all protect human life at sea.

3. The Committee notes the Government's information but wishes to point out that the actions punishable under the terms of section 55 of the Minor Offences Code of 1967, sections 205, 207 (paragraph 1), 208, 210 (paragraph 1), and 222 of the Code of Public Maritime Law of 1973, Act No. 3276 of 26 June 1944 respecting collective agreements

in the merchant marine (section 4, paragraph 1) and Act No. 229 of 25 October 1936 respecting collective labour disputes in shipping (section 15) have no bearing on the safety of the ship or of the persons on board. The Committee refers once again to the explanations given in the paragraphs 117 to 119 of the General Survey of 1979 on the abolition of forced labour, in which it indicated that the Convention does not cover sanctions relating to acts tending to endanger the ship or the life or health of persons on board.

The Committee expresses the firm hope that the Government will take the necessary measures in the very near future to bring its legislation into line with the Convention.

Guatemala (ratification: 1959)

1. The Committee recalls the conclusions reached by the Governing Body at its 267th Session (November 1996) following the recommendations of the committee set up to consider the representation made by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and Public Services International (PSI) under article 24 of the Constitution concerning the application of the present Convention and Convention No. 29. It notes that the Government's report does not contain the information requested by the Governing Body on the action taken in relation to its conclusions. In this connection, the Committee hopes the Government will deal in full in its next report with the application of the following points concerning *Article 1(a), (b) and (e) of the Convention.*

2. The Government is requested to indicate the measures taken to ensure that compulsory labour exacted under the guise of service in the so-called Civil Self-Defence Patrols (PACs) and Voluntary Civil Defence Committees (CVDCs) from hundreds of thousands of people is not used as a means of political coercion or education of the indigenous population in particular, or for the purpose of economic development, or as a means of racial, social, national or religious discrimination.

3. The Committee refers to its previous observations regarding *Article 1(a), (c) and (d)* of the Convention. For several years the Committee has been referring to the provisions of Legislative Decree No. 9 of 10 April 1963, Act for the Defence of Democratic Institutions (sections 2, 3, 4, 5, 6(2) and 7) and to sections 390(2), 396, 419 and 430 of the Penal Code, under which sentences of imprisonment involving, by virtue of section 47 of the Penal Code, the obligation to work, can be imposed as a punishment for expressing certain political opinions, as a measure of labour discipline or for participation in strikes, contrary to the provisions of the Convention. The Government has referred to the precedence of international Conventions over domestic law and indicated that the Committee's comments would be taken into account in the preparation of the new Penal Code. It said that the provisions contained in sections 4(1), (2), (4) and (7), 5(2), 13, 16, 18, 19, and 20 of Legislative Decree No. 9, Act for the Defence of Democratic Institutions had been repealed, but did not send a copy of the repealing legislation. The Committee noted that sections 2, 3, 4(3), (5) and (6), 5(1) and 6(2) were still in force and observed that the partial derogation of the Act on Democratic Institutions had not resulted in completely eradicating the divergency between national legislation and the Convention.

4. The Committee recalls once more that, with a view to bringing the legislation into harmony with the Convention, measures can be taken either to redefine the punishable offences in order to ensure that no one can be punished for having expressed political opinions or indicated their ideological opposition to the established political, social or economic system, or by according a special status to prisoners convicted of certain offences, under which they are free from the obligation to perform compulsory prison

labour, although they retain the right to work upon request. The Committee notes that in relation to compulsory prison work the Government refers to the Act on the remission on sentences, indicating that the Penal Code effectively imposes the obligation to work but that the work is paid and leads to remission of the sentence. The Committee again requests the Government to send a copy of the Governmental Agreement of 1984 (No. 975-84), Regulations for Detention Centres, which, according to the Government, specifies the voluntary nature of work for persons convicted.

The Committee again observes that this matter has been a subject of comment for more than ten years and hopes that the Government will take the measures necessary to bring national legislation into conformity with the Convention and will report progress made to this end.

Guinea (ratification: 1961)

The Committee has for many years been drawing the Government's attention to legislation which raises difficulties, as it seems to imply the use of forced or compulsory labour in circumstances referred to in *Article 1 of the Convention*. In particular, it has referred to Act No. 45/AN/69 of 1969 respecting the disclosure of professional secrets and the unlawful communication of state and party documents (in connection with *Article 1(a)*, regarding political coercion or the expression of certain views); and Decree No. 416/PRG of 1964, concerning compulsory service to overcome technical and economic underdevelopment in the Republic, and Ordinance No. 52 of 1959, also concerning compulsory military service (in connection with *Article 1(b)*, regarding the use of labour for purposes of economic development). More generally, the Committee asked the Government to provide copies of legislation relating to criminal procedure (Act No. 64/AN/69) and other matters relevant to the Convention.

The Committee has noted the Government's indications that early legislation has fallen into disuse during the Second Republic, and is to be reviewed. It would be grateful if the Government would include in its next report full information on any resort to the legislation mentioned above and on any progress made in the revision process (including revision of the Penal Code), together with information on practical application of the Convention requested in *point V of the report form* approved by the Governing Body.

Haiti (ratification: 1958)

Article 1(a), (b) and (c) of the Convention. In its previous comments, the Committee referred to the illegal trafficking of Haitian workers in the sugar cane plantations of the Dominican Republic. The Committee notes in this respect the Government's indications contained in its last report as regards the conformity of its legislation with the Convention, in particular the provisions of the Constitution of 1987 (sections 35-1, 36-6) and the Labour Code (sections 2, 4, 341 and 346), which formally prohibit forced or compulsory labour. The Committee also notes the measures envisaged by the Government, in particular to encourage the courts to take decisions with regard to questions of principle in respect of the application of the Convention, and its commitment to preventing, on the one hand, the use of any form of forced or compulsory labour as a means of coercion for holding or expressing political views ideologically opposed to the established political, social or economic system and, on the other hand, the use of forced or compulsory labour as a method of mobilizing and using labour for purposes of economic development. The Committee requests the Government to continue to provide information in respect of measures taken or envisaged to ensure that forced or compulsory labour is effectively suppressed in accordance with the Convention and the concrete results obtained. The Committee also hopes that the Government will be able to comply with its previous requests and transmit the exhaustive study on working conditions mentioned by it earlier with its next report.

Iraq (ratification: 1959)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. *Prison labour*. In its earlier comments, the Committee has noted that section 87 of the Penal Code requires convicted persons "to perform the work prescribed by law in penal institutions". It has also noted that Act No. 104 of 1981 on State Organization for Social Reform, which governs work for prisoners, does not distinguish between political and other prisoners. The Government has reiterated in its last report that prisoners are allowed to work, but are not obliged to do so, and that in fact there is not enough work for all the prisoners who desire to work. The Government has also provided information on conditions of work, as laid down in section 20 of the same Act (as amended by Act No. 8 of 1986), which it indicates approach those of work outside prisons. The Government has not referred again to its earlier expressed intention to amend the Penal Code to remove any lingering doubts in this respect.
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> 2. The Committee notes the information provided by the Government, and requests it to indicate what measures it contemplates to bring the legislation into line with its indications of the practice followed. The Committee also requests the Government to provide an updated copy of the legislation in force in this area.
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> 3. *Article 1(c) and (d) of the Convention*. The Committee noted in its previous comments that, under sections 197(i) and (iv) of the Penal Code, imprisonment (with an obligation to work) may be imposed when activities are stopped or gravely hampered in government departments and offices, public utilities and organizations and associations considered to be in the public interest, or in industrial installations, including oil installations, electric power stations, water installations and means of communication. The Government has indicated in earlier reports that state officials have no right to strike, and that section 197(iv) was applied without qualification and made no distinction between essential and non-essential services; the threat of imprisonment for disruption of work was intended to induce continuation of work. The Committee also referred to section 364 of the Penal Code, which prescribed imprisonment (with an obligation to work) in cases where officials or persons with public functions leave their work even after resignation or do not carry out their work when this might endanger the life, health or safety of the population or causes riots or unrest, or a stoppage in public utilities. It also noted that, under resolution No. 150 of 1987 of the Revolutionary Command Council (RCC), all workers in state service and the socialist sector are public officials. Finally, the Committee noted severe restrictions on the resignation of public officials under RCC resolution No. 700 of 13 May 1980.
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> 4. The Committee again takes note of these severe restrictions on the right of public officials to strike, or to leave their posts, under threat of imprisonment involving compulsory labour. It recalls that it has stated in paragraphs 122 to 132 of the 1979 General Survey on the abolition of forced labour that restrictions on the right of public servants to strike can be imposed but that they are compatible with the Convention only if the interruption of the services concerned would endanger the existence or well-being of the whole or part of the population.
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> 5. The Committee recalls that, in its 1993 report, the Government indicated that measures had been taken to amend sections 197(iv) and 364 of the Penal Code. It requests the Government to provide detailed information on the legislation now in force in this regard, and on its application in practice. It also requests it to repeal or modify any legislation which remains contrary to the requirements of the present Convention.

Ireland (ratification: 1958)

Article 1(c) and (d) of the Convention. In comments made since 1963 the Committee noted that under sections 221 and 225(1)(b) and (c) of the Merchant Shipping Act, 1894, certain disciplinary offences by seafarers are punishable with imprisonment (involving, under section 42 of the Rules for the Government of Prisons, 1947, an obligation to work); and that under sections 222, 224 and 238 of the Merchant Shipping Act, seafarers absent without leave may be forcibly conveyed on board ship. The Committee noted the Government's repeated indications over a number of years that the amendment of the merchant shipping legislation was proceeding. The Government states in its latest report received in November 1997 that it is intended to repeal the provisions of the Merchant Shipping Acts, 1894 and 1906, through the adoption of the Merchant Shipping (Miscellaneous Provisions) Bill, 1997. It also indicates that the Rules for the Government of Prisons, 1947, have not yet been replaced by the proposed new Rules, which are still at draft stage.

The Committee trusts that the Bill will be adopted in the near future, in order to bring the legislation into conformity with the Convention. It requests the Government to supply copies of the amended legislation, as well as of the new Rules for the Government of Prisons, as soon as they are adopted.

Kenya (ratification: 1964)

Article 1(a), (c) and (d) of the Convention. In its earlier comments the Committee referred to various provisions of the Penal Code, the Public Order Act, the Prohibited Publications Order, 1968, the Merchant Shipping Act, 1967, and the Trade Disputes Act (Cap. 234) under which imprisonment (involving an obligation to perform labour) may be imposed as a punishment for the display of emblems or the distribution of publications signifying association with a political object or political organization, for various breaches of discipline in the merchant marine and for participation in certain forms of strikes. The Committee has noted that the Government's latest report contains no new information on this subject. The Committee requests the Government to provide, in its next report, information on any new developments in this field, including the report of the Task Force on the Reform of Penal Laws and Procedures submitted to the Attorney-General in December 1997, and on other matters referred to in a request which is being addressed directly to the Government.

Liberia (ratification: 1962)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. *Article 1(a) of the Convention.* The Committee noted the entry into force on 6 January 1986 of the new Constitution which guarantees fundamental rights, in particular the right to freedom of expression (article 15), the right to assemble and to associate (article 17), and provides for the free establishment of political parties, subject to their being registered (articles 77 and 79). The Committee noted that under article 95 of the new Constitution any enactment or rule of law in existence immediately before the coming into force of the Constitution, whether derived from the abrogated Constitution or from any other source shall, in so far as it is not inconsistent with any provision of the new Constitution, continue in force as if enacted, issued or made under the authority of the Constitution. The Committee referred to its previous comments in which it observed that prison sentences (involving, under Chapter 34, section 34-14, paragraph 1, of the Liberian Code of Laws, an obligation to work) might be imposed in circumstances falling within Article 1(a) of the Convention under section 52(1)(b) of the Penal Law (punishing certain forms of criticism of the Government) and

section 216 of the Election Law (punishing participation in activities that seek to continue or revive certain political parties). The Committee requested the Government to state whether the above provisions continue in force and, if so, to indicate the measures taken or contemplated with a view to their repeal. The Committee also requested the Government to provide a copy of the Decree No. 88A of 1985 relating to criticism of the Government.

2. *Article 1(c) and (d).* In earlier comments the Committee also referred to various provisions of the Maritime Law punishing breaches of labour discipline and of Decree No. 12 of 30 June 1980 prohibiting strikes. In the absence of a reply, the Committee again addressed a direct request on these matters to the Government.

3. In its previous comments concerning Decree No. 12 of 30 June 1980 prohibiting strikes, the Committee noted the Government's statement in its report for 1982-83 that no penalty had been imposed for violation of the Decree and the statement by a Government representative to the Conference Committee in 1984 during the discussion of Convention No. 87 that the ban on strikes was due to be lifted on 26 July 1984.

The Committee observed that the Government's report contained no information in this regard. The Committee noted however from the conclusions adopted by the Committee on Freedom of Association concerning Case No. 1219 (in particular the 241st Report of that Committee) that the ban on strikes had not yet been lifted. The Committee requested the Government to provide information on any measures adopted or envisaged in this matter.

Libyan Arab Jamahiriya (ratification: 1961)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

1. *Article 1(a), (c) and (d) of the Convention.* In the comments it has been making for a number of years, the Committee has referred to various provisions of the Publications Act of 1972, under which persons expressing certain political views or views ideologically opposed to the established political, social or economic system may be punished with penalties of imprisonment (involving, under section 24(1) of the Penal Code, an obligation to perform labour). The Committee also referred to sections 237 and 238 of the Penal Code, under which penalties of imprisonment (involving compulsory labour) may be imposed on public servants or employees of public institutions as a punishment for breaches of labour discipline or for participation in strikes, even in services the interruption of which would not endanger the life, personal safety or health of the whole or part of the population.

In its earlier comments the Committee noted the information supplied by the Government to the effect that Act No. 5 of 1991 on the application of the principles of the Green Book on Human Rights, and Act No. 20 of 1991 on the promotion of freedom, proclaim the right of each citizen to express his opinion, that part 2 of the Green Book prohibits penalties such as forced labour, and that the provisions of the Publications Act No. 76 of 1972 and of the Penal Code would be amended. It also noted that under section 2 of Act No. 5 of 1991, amendments must be drawn up within a period of one year.

In its latest report, received in 1995, the Government reaffirms its intention to amend the provisions of the Publications Act No. 76 of 1972, and the penal Code, referred to above, within the period of time prescribed in section 2 of Act No. 5, so as to ensure compliance with the Convention.

The Committee hopes that the amendments will now be made and that they will ensure that no penalties involving compulsory labour may be imposed as a punishment on persons who have expressed certain political or ideological opinions or who have committed breaches of labour disciplines or participated in strikes.

The Committee hopes that the Government will soon be in a position to supply a copy of the provisions adopted to this end.

2. In its earlier comments the Committee noted the information provided by the Government in 1992 in reply to its comments, to the effect that the Orders of the Higher

Council of the Revolution of 1969, the texts of which it had been requesting, became null and void following the promulgation of Acts Nos. 5 and 20 of 1991.

The Committee noted that the text of Act No. 5 of 1991 had not been included in the list of texts transmitted by the Government and that section 35 of Act No. 20 of 1991 provides in general terms that all conflicting legislation is amended. It also noted that the Orders in question on the defence of the revolution (of 11 December 1969) and on trials for political and administration corruption (of 26 October 1969) are explicitly referred to in section 5(A)(8) of the Publications Act No. 76 of 1972. The Committee requested the Government to indicate the measures taken to formally repeal the texts in question and to transmit copies of the provisions adopted to this effect.

In the absence of a reply, the Committee again expresses the hope that the Government will supply copies of the Orders of 1969 or of any provisions repealing them, as well as copies of Act No. 5 of 1991 of the Green Book on Human Rights and the legislative texts governing the establishment, functioning and dissolution of associations and political parties.

Morocco (ratification: 1966)

Article 1(c) and (d) of the Convention. The Committee takes note of the Government's reply to its previous observations.

1. The Committee's previous observations referred to the comments of the Democratic Confederation of Labour (CDT) and the General Union of Moroccan Workers (UGTM), concerning the fact that section 5 of Decree No. 2-57-1465 of 8 February 1958 provides penalties for any coordinated stoppage or collective act of indiscipline by public servants. The Committee observed that, unless such penalties were applicable only to essential services in the strict sense of the term, section 5 would allow the exaction of compulsory prison labour, contrary to the terms of the Convention.

2. In this connection, the Committee notes the Government's statement to the effect that the right to strike is freely exercised in both the public and the private sectors. It therefore requests the Government to ensure that the text in question is brought into conformity with the Convention, to avoid any threat of forced or compulsory labour being imposed under conditions that are not compatible with the Convention.

3. The Committee also noted the comments of the Moroccan Labour Union (UMT) concerning section 288 of the Penal Code, which provides for a sentence of imprisonment (involving compulsory labour) for acts of violence, the use of force, threats or fraudulent activities during certain types of stoppage. The Committee takes note of the Government's commitment in this regard and trusts that it will provide with its next report copies of any rulings handed down by the courts.

New Zealand (ratification: 1968)

The Committee notes with satisfaction from the Government's reply to its earlier comments that the third schedule to the Maritime Transport Act, 1994, came into force on 1 February 1995, thus repealing the Shipping and Seamen Act, 1952, under which disciplinary offences were punishable with imprisonment involving an obligation to perform labour, and seafarers absent without leave were subject to forcible return on board ship.

Nigeria (ratification: 1960)

The Committee refers to its general observation and the decision of the Governing Body at its November session, following the direct contacts mission which took place in August 1998. It hopes the Government will supply a report for examination at its next session, and that it will indicate in detail the position in relation especially to *Article 1(a), (c), (d) and (e) of the Convention*, bearing in mind among other things the questions raised in the previous comments concerning these matters:

1. The Government is requested to indicate whether the State Security (Detention of Persons) Decree, No. 2 of 1984, as amended, continues in force and whether forced or compulsory labour may be imposed under it in circumstances incompatible with the Convention.

2. The Government is requested to indicate steps taken to ensure observance of the Convention in respect of: (i) section 81(1)(b) and (c) of the Labour Decree, 1974, as regards direction to fulfil contracts of employment on pain of imprisonment involving an obligation to work; (ii) section 117(b), (c) and (e) of the Merchant Shipping Act, as regards possible imprisonment with the obligation to work for seafarers in breach of discipline; and (iii) section 13(1) and (2) of the Trade Disputes Decree, No. 7 of 1976, as regards similar imprisonment for participation in strikes.

Pakistan (ratification: 1960)

I. The Committee notes the information supplied by the Government in its report received in September 1997.

Article 1(c) and (d) of the Convention. 1. In its earlier comments, the Committee noted that the Pakistan Essential Services (Maintenance) Act, 1952, and corresponding provincial Acts, prohibit employees from striking, subject to penalties of imprisonment that may involve compulsory labour. They apply permanently to all employment under the federal and provincial governments and local authorities and, in particular, any service related to transport or, by notification, employment in any autonomous educational body. The Government states in its report that the application of the 1952 Act has been further narrowed, and there are now only six categories of establishment which are considered critical for the security of the country and the welfare of the community.

2. The Committee points out once again that *Article 1(d)* would not apply where the sanction is imposed not for participation in a strike as such but for the fact of endangering the life, personal safety or health of persons through a strike in a truly essential service. However, the scope of the Essential Services (Maintenance) Act does not appear to be limited to such services. The Committee therefore expresses the hope that the Act will be either repealed or amended in the near future so as to ensure the observance of the Convention, and that the Government will report on the action taken to this effect.

3. In its earlier comments, the Committee noted the repeated assurances given by the Government that sections 100 to 103 of the Merchant Shipping Act, providing for the imposition of compulsory labour in relation with various breaches of labour discipline by seafarers, would be amended. The Government indicates in its latest report that the above-mentioned sections of the Act have been softened and reintroduced in the Merchant Shipping Bill, 1996, with some modifications. The Committee observes, however, that section 206 of the new Bill still contains provisions which would permit the imposition of penal sanctions of imprisonment (which may involve compulsory labour) in respect of various breaches of labour discipline, as well as provisions under which seafarers may be forcibly returned to their ship. Referring to paragraphs 117 to 119 of its General Survey of 1979 on the abolition of forced labour, the Committee reiterates its hope that the necessary amendments will at last be adopted so as to remove the penalties involving compulsory labour from sections 100 and 100(ii), (iii) and (v) of the Merchant Shipping Act (or limit their scope to offences committed in circumstances endangering the safety

of the ship or the life, personal safety or health of persons) and to repeal the provisions of sections 101 and 102 of the Act under which seafarers may be forcibly returned on board ship to perform their duties. The Committee trusts that the Government will soon be in a position to provide information on action taken to this end.

II. The Committee observes that the Government's report does not contain any new information on the following points already raised by the Committee in its previous observation:

Article 1(a) and (e). 4. In comments made for a number of years, the Committee has referred to certain provisions in the Security of Pakistan Act, 1952 (sections 10-13), the West Pakistan Press and Publications Ordinance, 1963 (sections 12, 36, 56, 59 and 23, 24, 27, 28 and 30) and the Political Parties Act, 1962 (sections 2 and 7) which give the authorities wide discretionary powers to prohibit the publication of views and to order the dissolution of associations, subject to penalties of imprisonment which may involve compulsory labour. The Government has repeated that any punishment under the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, would be inflicted after fair trial by a court of law in which the accused would be given a full opportunity to defend and prove their innocence.

5. The Committee refers again to the explanations provided in paragraphs 102 to 109 of its General Survey of 1979 on the abolition of forced labour, where it indicated that compulsory labour in any form, including compulsory prison labour, falls within the scope of the Convention in so far as it is exacted in one of the five cases specified in Article 1 of the Convention. It is both the requirement of due process of law and the substance of penal provisions aimed at the punishment of political dissent with sanctions involving compulsory labour which are covered by Article 1(a) of the Convention.

6. The Committee noted the Government's indication in the report received in December 1996 that the Registration of Printing Press and Publications Ordinance, 1996, had been promulgated, and that efforts had been made in this Ordinance to fulfil the obligations under the Convention. The Committee understood that an Ordinance promulgated under article 89(2) of the Constitution was required to be laid before the National Assembly and would be considered repealed at the expiration of four months from its promulgation if it was not approved by the Assembly. The Committee expressed the hope that the Government would soon provide a copy of the 1996 Ordinance, as well as information on action by the National Assembly to approve the Ordinance and on any measures taken to repeal the West Pakistan Press and Publications Ordinance, 1963.

7. In the absence of any new information concerning sections 10 to 13 of the Security of Pakistan Act, 1952, and sections 2 and 7 of the Political Parties Act, 1962, the Committee once again expresses the hope that the necessary measures will soon be taken also to bring these provisions into conformity with the Convention and that the Government will report on progress achieved. Pending action to amend these provisions, the Government is again requested to supply information on their practical application, including the number of convictions and copies of any court decisions defining or illustrating the scope of the legislation. The Committee also once again requests the Government to supply an updated copy of the provisions of the Jail Code governing prison labour.

8. In its earlier comments, the Committee referred to sections 298B(1) and (2) and 298C of the Penal Code, inserted by the Anti-Islamic Activities of Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, No. XX of 1984, under which any person of these groups who uses Islamic epithets, nomenclature and titles

is punished with imprisonment of either description for a term which may extend to three years.

9. The Committee has noted the Government's repeated statement in its reports that religious discrimination does not exist and is forbidden under the Constitution and the laws of Pakistan, and any law, custom or usage having the force of law, so far as it is inconsistent with the rights conferred by the Constitution, is void to the extent of the inconsistency. According to the Government, religious freedom exists as long as the feelings of another religious community are not injured and anyone, regardless of religious conviction, will be punished for professing religion in a way that injures the feelings of another community. The provisions of the Penal Code referred to were drafted with a view to ensuring peace and tranquillity, particularly in places of worship. Forced labour as a result of religious discrimination does not exist in Pakistan; all minorities enjoy all fundamental rights and courts are free to uphold and safeguard the rights of minorities.

10. The Committee had also taken note of the report presented to the United Nations Commission on Human Rights in 1991 by the Special Rapporteur on the Application of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Conviction (document E/CN.4/1990/46 of 12 January 1990), referring to allegations according to which proceedings were instituted, on the basis of sections 298B and C of the Penal Code, in the districts of Guranwala, Shekhupura, Tharparkar and Attock against a number of persons having used specific greetings.

11. The Committee further noted from the report by the Special Rapporteur presented to the Commission on Human Rights in 1992 (document E/CN.4/1992/52 of 18 December 1991) that nine persons were sentenced to two years' imprisonment for acting against Ordinance XX of 1984 in April 1990, and that another person was sentenced to one year of imprisonment in 1988 for wearing a badge, the sentence being upheld by the Court of Appeal. It is also stated that the Ahmadi daily newspaper had been banned during the past four years, its editor, publisher and printer indicted, and Ahmadi books and publications banned and confiscated. There is reference also to the sentencing under sections 298B and 298C of the Penal Code of two Ahmadis to several years' imprisonment and a fine of 30,000 rupees (in the case of failure to pay the fine, imprisonment would be extended by 18 months).

12. The Committee noted the Government's repeated indications in its reports that the report of the Special Rapporteur was not based on facts. The Committee therefore requested the Government to provide factual information on the practical application of the provisions of sections 298B and 298C of the Penal Code, including the number of persons convicted and copies of court decisions in particular in the proceedings mentioned by the Special Rapporteur, as well as of any court ruling that sections 298B and 298C are incompatible with constitutional requirements.

13. The Committee noted that the Government had not supplied the information requested on court practice to contradict the findings of the Special Rapporteur. In its report received in December 1996, the Government indicated that the Quadianis were prohibited under sections 298B and 298C of the Pakistan Penal Code from using epithets, descriptions and titles reserved for certain Holy Personages or places or posing as Muslims, and that the main purpose of this restriction was to differentiate them and prohibit them from preaching the religion as Islam after they have been declared non-Muslim. It would appear to the Committee that a restriction imposed for this main purpose and enforced with penalties involving compulsory labour falls within the scope of Article 1(a) and (e) of the Convention, which prohibits the imposition of penalties involving

compulsory labour as a punishment for expressing views opposed to the established political or social system or as a means of social or religious discrimination.

14. The Government further stated in its report received in December 1996 that the Ahmadis had been accorded all rights and privileges guaranteed to non- Muslim minorities under the Constitution and laws of Pakistan, but that some religious practices of Ahmadis are similar to those of Muslims which arouse resentment among the latter and thus pose a threat to public order and safety. Consequently, the Government considered that it had to take certain legislative and administrative measures so as to maintain the peace.

15. The Committee took due note of these indications. Referring to the explanations provided in paragraphs 133 and 141 of its General Survey of 1979 on the abolition of forced labour, the Committee recalled that, as provided in the Universal Declaration of Human Rights, limitations may be imposed by law on the rights and freedoms enumerated in it "for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society". Thus, the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. But where punishment involving compulsory labour is aimed at the peaceful expression of religious views, or where such punishment (for whatever offence) is meted out more severely, or even exclusively, to certain groups defined in social or religious terms, this falls within the scope of the Convention.

16. The Committee therefore reiterates its hope that the necessary measures will be taken in relation to sections 298B and 298C of the Penal Code to ensure the observance of the Convention.

Article 1(c). 17. In comments made for many years, the Committee has referred to sections 54 and 55 of the Industrial Relations Ordinance (No. XXIII of 1969) under which whoever commits any breach of any term of any settlement, award or decision or fails to implement any such term may be punished with imprisonment which may involve compulsory labour. The Committee expressed the hope that the Government would take the necessary measures to bring the Industrial Relations Ordinance into conformity with the Convention, by repealing sections 54 and 55 of the Ordinance or by repealing the penalties which may involve compulsory labour, or by limiting their scope to circumstances endangering the life, personal safety or health of the population.

18. The Government previously indicated that a Bill to amend the Industrial Relations Ordinance had been presented to the National Assembly and that it was proposed to remove from the provisions of sections 54 and 55 the element of compulsory labour by replacing imprisonment with what was called "simple imprisonment". This was confirmed by the Government representative to the Conference Committee in 1990. The Government had since indicated in its reports, up to that received in December 1996, that the proposed amendment was under active consideration. The Committee expresses the hope that the Government will soon be in a position to indicate that the Industrial Relations Ordinance has been brought into conformity with the Convention.

Panama (ratification: 1966)

Article 1(c) of the Convention. In previous observations, the Committee has referred to section 1120 of the Commercial Code, under which seafarers who abandon their vessel may be required, on pain of imprisonment, to complete the term of their contract and to work for one month without pay. This contradicts the Convention, which prohibits the use of forced or compulsory labour — including prison labour — as a means of labour discipline. The Committee notes from the Government's report that the Maritime Labour Bill was tabled in the legislature in September 1997, but that the Government subsequently transmitted the Committee's comments on this Convention to be taken into account.

The Committee hopes that the new legislation will ensure that seafarers are no longer subject to the penalty of imprisonment involving forced or compulsory labour as a means of labour discipline, in order to comply with the Convention. As regards the question of the freedom of seafarers to terminate their employment, the Committee refers to its observation under Convention No. 29.

Paraguay (ratification: 1968)

Article 1(a) of the Convention. In the comments that it has been making for many years, the Committee has referred to section 39 of Act No. 210 of 1970 on the prison system, which lays down that work is compulsory for inmates. Section 10 of the Act specifies that inmates are not only convicted persons but also those who are subject to security measures in a penal establishment. The Committee noted the Bill prepared in 1977 to amend section 39 of Act No. 210 to exempt from the obligation to work detainees who have not been convicted in a court of law and those who have been convicted for political offences which did not involve acts of violence. In its report, the Government does not provide any new information in this respect. The Committee requests the Government once again to take the necessary measures without delay to ensure compliance with the Convention on this matter and to provide full information with its next report.

Philippines (ratification: 1960)

1. *Article 1(d) of the Convention.* In its earlier comments the Committee noted that in case of a planned or current strike in an industry considered indispensable to the national interest, the Secretary of Labour and Employment may assume jurisdiction over the dispute and decide it or certify it for compulsory arbitration. Furthermore, the President may determine the industries indispensable to the national interest and assume jurisdiction over a labour dispute (section 263(g) of the Labour Code, as amended by Act No. 6715). The declaration of a strike after such assumption of jurisdiction or submission to compulsory arbitration is prohibited (section 264), and participation in an illegal strike is punishable by imprisonment (involving under section 1727 of the Revised Administrative Code an obligation to perform labour) of up to three years (section 272(a) of the Labour Code). The revised Penal Code also lays down sanctions of imprisonment (section 146).

2. The Committee noted from the Government's report received in November 1994 that amendments to section 263(g) of the Labour Code had been proposed in Senate Bill No. 1757 which sought to limit the situation only to disputes affecting industries performing essential services and that the Bill had been filed with Congress. The Government's latest report on the application of the Convention contains no new information on this subject. The Committee therefore wishes to point out once again, with reference to paragraph 123 of its 1979 General Survey on the abolition of forced labour, that any compulsory arbitration enforceable with penalties involving compulsory labour must be limited to services whose interruption would endanger the life, personal safety or health of the whole or part of the population. The Committee trusts that the Government will soon be in a position to indicate progress in bringing the legislation into conformity with the Convention.

It has raised several other points in a request addressed directly to the Government.

Senegal (ratification: 1961)

Article 1(c) and (d) of the Convention. Further to its previous observations, the Committee notes that work is still continuing on the reform of Labour Code and the Merchant Shipping Code. It hopes that this reform will ensure in particular that sections 223 and 243 of the Merchant Shipping Code, which provide for a penalty of imprisonment involving compulsory labour in the event of certain breaches of labour discipline, are brought into conformity with the requirements of the Convention and that the Government will provide the necessary information.

Article 1(b). The Committee notes that the Government hopes to transmit in the near future the information which was requested previously concerning the organization and activities of youth camps.

Sierra Leone (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In its earlier comments the Committee requested the Government to supply indications on the evolution of the political situation, in so far as it relates to the application of the Convention. It noted that the Constitution adopted in 1991 (Act No. 6 of 1991) which provided for the recognition and protection of fundamental human rights and freedoms, had been suspended. The Government informed the Committee in its latest report (1995) that public meetings of a political nature remained banned and that new guidelines for publications had been introduced.
>
> The Committee noted that in July 1996 the Constitutional Reinstatement Provisions Act reinstated the suspended parts of the 1991 Constitution. It further notes the change of government in May 1997 and hopes that the Government will supply information on the developments of the political situation in the country, in so far as the application of the Convention is concerned, and in particular, the information on the application of provisions concerning the freedom of speech and press, freedom of peaceful assembly and association. The Committee also asks the Government to provide, in its next report, the information requested in its previous observation on the application in practice of sections 24, 32 and 33 of the Public Order Act (concerning public meetings, the publication of false news and seditious offences). Please also provide particulars of the outcome of work of the Constitutional Review Committee, to which the Government referred in its 1995 report.

Sudan (ratification: 1970)

1. The Committee notes the Government's summary report and the copy of Chap. XIII of the Regulations, adopted in December 1997, concerning the organization of work in prisons and the treatment of prisoners. The Committee invites the Government to take measures in order to bring its legislation into conformity with the Convention in the matters referred to below and to indicate any developments in its next report. It also asks the Government to provide the text of the new Constitution.

2. *Article 1(a) and (d) of the Convention.* In its previous observations, the Committee had noted that the state of emergency was still in force in the country and that in virtue of the 1989 regulations adopted in this respect, persons convicted of offences against these regulations were subject, in certain cases, to imprisonment. The Committee also had noted that under the Constitution then in force, political parties were prohibited. The Committee notes from information provided by the Government under Convention No. 29 that recent political and constitutional developments have taken place. The Committee recalls that the Convention prohibits the use of forced or compulsory labour as a means of political coercion or education or as punishment for holding or expressing

political views or views ideologically opposed to the established political, social or economic system. The Committee had also noted that under the Industrial Relations Act of 1976, participation in strikes is punishable with imprisonment whenever the Ministry of Labour has decided to submit a dispute to compulsory arbitration, which results in binding awards. This situation seems to make it impossible for workers to resort legally to strike action. The Committee notes that, under section 38(6) of Chap. XIII of the Regulations of 1997 concerning the organization of work in prisons and the treatment of prisoners, any person convicted for more than six months has to execute work as listed in section 39. The Committee recalls that the Convention contains a general prohibition of the use of any form of forced or compulsory labour as a punishment for having participated in strikes.

3. *Article 1(b).* The Committee asked the Government to supply information on any statutory or administrative provisions applicable to compulsory service as provided for in the triennial Economic Salvation Programme. The Committee is aware that the country is still facing many difficulties. It asks the Government to indicate in its next report whether any new economic programme including compulsory service is currently applied and to give detailed information on any practical application of such service.

Syrian Arab Republic (ratification: 1958)

Article 1(a), (c) and (d) of the Convention. In its earlier comments the Committee referred to certain provisions of the Economic Penal Code, the Penal Code, the Agricultural Labour Code and the Press Act, under which prison sentences involving compulsory labour can be imposed as a means of political coercion or as punishment for expressing views opposed to the established political system, breach of labour discipline or participation in strikes. For a number of years the Government has been indicating that a draft legislative decree amending various sections of the Penal Code so as to eliminate all obligation to perform prison labour was being examined by the competent authorities, and in 1995 it was approved by the Council of Ministers and submitted to the Ministry for the Affairs of the Presidency of the Republic. However, in its reports received in 1997 the Government indicated that the Ministry of Justice is still considering the amendment of the Penal Code and has referred the matter to the committee responsible for the amendment of the Code. The Committee trusts that the legislative decree referred to by the Government will be adopted in the near future and asks the Government to provide, in its next report, information on the progress made in this regard. It also hopes the Government will pursue its consultations with the International Labour Office regarding the amendment of the agricultural labour legislation and the various texts mentioned above, with a view to ensuring compliance with the Convention.

United Republic of Tanzania (ratification: 1962)

The Committee notes that, as the Government's report gives no further particulars in reply to the earlier observation and direct requests, the Committee must return to the question in a new observation and a direct request. It hopes that the Government will take the necessary steps and supply the information requested.

Article 1(a), (b), (c) and (d) of the Convention. In its earlier comments the Committee referred to a number of provisions contained in the Penal Code, the Newspapers Act, the Merchant Shipping Act and the Industrial Court Act, under which penalties involving compulsory labour may be imposed in circumstances falling within the scope of the Convention. It noted the Government's statement in its report received in 1992 that ministerial consultations aimed at amending the legislation referred to above were continuing, bearing in mind the political situation, following the adoption of the ninth constitutional amendment. The Constitution, as amended, has allowed for multi-party politics; and the Political Parties Act 1992 has provided specifically for formation and registration of political parties.

The Committee expressed the hope that the draft legislation under consideration would provide for the repeal of all provisions which are incompatible with the Convention and that the Government would indicate the action taken in this regard. The Committee also asked the Government to provide information on the amendment or repeal of the provisions of different enactments to which it referred in its comments under Convention No. 29 which contradict *Article 1(b)* of this Convention.

The Government indicates in its latest report that proposals regarding amendment of the Merchant Shipping Act so as to bring it into conformity with the Convention have been submitted by the trade union to the Government for purposes of being tabled within the Labour Advisory Board (LAB) for consideration by the tripartite partners, and that the Government intends to supply information on the position of the LAB as soon as its work is completed.

In the absence of new information concerning the amendment of other Acts referred to above, the Committee again expresses the hope that the necessary action will be taken in the near future for the repeal of all provisions incompatible with the Convention, and that the Government will soon report progress made in this regard. The Committee is again addressing a more detailed request on the above matters directly to the Government.

Thailand (ratification: 1969)

The Committee notes the information provided by the Government in reply to its earlier comments.

1. *Article 1(a) of the Convention.* The Committee noted previously that penalties of imprisonment may be imposed under sections 4, 5, 6 and 8 of the Anti-Communist Activities Act B.E. 2495 (1952) for engaging in communist activities, conducting propaganda or making any preparation with a view to carrying on communist activities, belonging to any communist organization, or attending any communist meeting unless able to prove ignorance of its nature and object. Similarly, under sections 9, 12 and 13 to 17 of the same Act, inserted by the Anti-Communist Activities Act (No. 2) B.E. 2512 (1969), penalties of imprisonment may be imposed for assisting any communist organization or member of such organization in a variety of ways, propagating communist ideology or principles leading to the approval of such ideology, or contravention of restrictions imposed by the Government on movements, activities and liberties of persons in any area classified as a communist infiltration area. The Government indicates in its report that the Anti-Communist Activities Act is taken care of by the Ministry of Defence and repeats that it is important to the nation's interest and security.

The Committee must again point out that these provisions may be used as a means of political coercion or as a punishment for holding or expressing, even peacefully, certain political views or views ideologically opposed to the established political, social or economic system, and are accordingly incompatible with *Article 1(a) of the Convention*, in so far as the penalties provided involve compulsory labour. It therefore reiterates its hope that the necessary measures will be taken to ensure the observance of the Convention in this respect, and asks the Government to report on the action taken.

2. *Article 1(c).* In comments made since 1976, the Committee has noted that sections 5, 6, and 7 of the Act for the prevention of desertion or undue absence from

merchant ships, B.E. 2466 (1923), provide for the forcible conveyance of seafarers on board ship to perform their duties. In 1990, the Committee noted the Government's indication in its report for the period ending 30 June 1988 that "the Act for the prevention of desertion or undue absence from merchant ships, B.E. 2466 (1923), has not been changed or repealed at present", but that a committee had been established for considering seafarers' legislation.

The Government in its latest report attributes the lack of progress in this respect to the division of responsibility among several government agencies, such as the Ministry of Labour and the Harbour Department, the Bureau under Ministry of Transport and Communication. The Committee recalls the Convention's requirement that forced labour should not be used as a means of labour discipline and asks the Government to report on any progress made in this regard.

3. In its earlier comments the Committee noted that under sections 131 and 133 of the Labour Relations Act, B.E. 2518 (1975), penalties of imprisonment (involving compulsory labour) may be imposed on any employee who, even individually, violates or fails to comply with an agreement on terms of employment or a decision on a labour dispute under sections 18, paragraph (2), 22, paragraph (2), 23 to 25, 29, paragraph (4), or 35(4) of the Labour Relations Act. The Government considered these provisions necessary to make both employers and workers abide by agreements on terms of employment or arbitration awards and that they do not provide for compulsory labour. The Government indicates in its latest report that the provisions of sections 131 and 133 were applied to only a few cases and no imprisonment was imposed. The Committee previously noted that sections 131 to 133 of the Labour Relations Act were incompatible with the Convention in so far as the scope of sanctions involving compulsory prison labour is not limited to acts and omissions that impair or are liable to endanger the operation of essential services, or which are committed either in the exercise of functions that are essential to safety or in circumstances where life or health are in danger.

The Government now states in the report that it agrees that the distinction between essential and non-essential services should be addressed, but that it is not ready to sacrifice its well-organized system of law for the clearer meaning of "essential service". The Committee trusts that the Government will nevertheless reconsider this question in the light of its obligations under the Convention, which aims to protect the fundamental human right to freedom from forced labour, and that it will provide full details in its next report. It notes in this context the Government's indication that the Senate was in fact expected to discuss the definition of "essential services".

4. *Article 1(d).* In its earlier comments, the Committee noted that penalties of imprisonment (involving compulsory labour) may be imposed for participation in strikes under the Labour Relations Act: (i) section 140 read together with section 35(2), if the Minister orders the strikers to return to work as usual, being of the opinion that the strike may cause serious damage to the national economy or hardship to the public or may affect national security or be contrary to public order; (ii) section 139 read together with section 34(4), (5) and (6), if the party required to comply with an arbitrator's award under section 25 has done so, if the matter is awaiting the decision of the Labour Relations Committee or a decision has been given by the Minister under section 23(1), (2), (6) or (8) or by the committee under section 24, or if the matter is awaiting the award of labour disputes arbitrators appointed under section 25.

The Committee notes the Government's statements in its latest report, which seem to regard the effective enforcement of the provisions in question as dependent on the inclusion of compulsory labour in the penalty of imprisonment. Although under the above-mentioned provisions of the Act, penalties of imprisonment involving compulsory labour may be imposed for participation in strikes which are not excluded from the scope of the Convention, i.e. where they concern essential services in the strict sense of the term (that is, services whose interruption would endanger the life, the personal safety or the health of the whole or part of the population), in a wider range of circumstances their enforcement with penalties involving compulsory prison labour is contrary to *Article 1(d) of the Convention*. To this extent, then, the question seems therefore to depend once again on the definition of "essential services". With reference to paragraphs 122 to 132 of its General Survey of 1979 on the abolition of forced labour, and recalling the Government's indication in its report ending June 1988 that the powers conferred under section 35 of the Act have seldom been used, the Committee expresses firmly the hope that the Government will take the necessary measures to have the above-mentioned provisions amended.

5. The Committee previously noted that under section 117 of the Criminal Code participation in any strike with the purpose of changing the laws of the State, coercing the Government or intimidating the people was punishable with imprisonment (involving compulsory labour). It referred to the explanations provided in paragraph 128 of its General Survey of 1979, where it indicated that, while the prohibition of purely political strikes lies outside the scope of the Convention, in so far as restrictions on the right to engage in such strikes are accompanied by penalties involving compulsory work, they should apply neither to matters likely to be resolved through the signing of a collective agreement nor to matters of a broader economic and social nature affecting the occupational interests of workers.

The Committee notes the Government's statement in the report that the sole object of section 117 is the prohibition of "purely political" strikes and not the suppression of the right to strike or to bargain collectively. It observes that *Article 1(d)* makes no distinction as between "political" and other strikes. The Committee again requests the Government to provide information on the application in practice of this provision, including the number of sentences of imprisonment and particulars of relevant court decisions, as well as on any measures taken or contemplated in this connection to ensure the observance of the Convention.

6. In its earlier comments the Committee noted that section 19 of the State Enterprise Labour Relations Act provided that workers of state enterprises may not in any case stage a strike or undertake any activity in the nature of a strike. Under section 45, paragraph 1, of the Act, violation of this prohibition may be punished by imprisonment (with labour) for a term of up to one year; this penalty is doubled in the case of a person who "incites, or aids or abets the commission" of the offence under paragraph 1. Referring to the explanations provided in paragraph 123 of its General Survey of 1979 on the abolition of forced labour, the Committee recalled that the imposition of penalties of imprisonment involving compulsory labour on striking employees would be compatible with the Convention in the case of essential services in the strict sense of the term, i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population. The distinction between essential and non-essential services is a functional one and does not depend on private or state ownership of the enterprises concerned. A blanket prohibition of strikes in all state-owned enterprises, if enforced with penalties involving compulsory labour, is incompatible with the Convention.

The Committee notes the Government's indication in its report that the State Enterprise Labour Relations Act is now before the Senate for consideration and that the issue of a definition of essential services is likely to be discussed. The Committee therefore hopes that appropriate measures will be taken in the near future with a view to bringing the Act into conformity with the Convention and asks the Government to supply, in its next report, full information on the progress made in this regard.

7. In general, as regards the question of the roles of different government agencies and, in particular, in relation to the definition of "essential services" for purposes of the Convention, the Committee would remind the Government that the technical advisory services of the ILO are at its disposal.

Trinidad and Tobago (ratification: 1963)

The Committee notes that the Government's report contains no reply to the previous comments.

Article 1(c) and (d) of the Convention. 1. The Committee's earlier observations referred to sections 157 and 158 of the Shipping Act, 1987, which provide for imprisonment — under the Prisons Rules, involving compulsory labour — in cases of disobedience, desertion and absence without leave; and section 162, empowering forcible return on board ship of seafarers in desertion. The Committee pointed out that these provisions are incompatible with the Convention, in so far as they imply not only sanctions including compulsory work but also legal compulsion in the form of direct physical constraint or the menace of a penalty for participation in strikes or breaches of labour discipline or to ensure performance of services by workers (see paragraphs 110 and 117 of the 1979 General Survey on the Abolition of Forced Labour). The Committee noted the Government's indication in 1996 that no use had been made of those sections. It reiterates its hope that the Government will ensure that the legislation is brought into conformity with the Convention on these points and that the next report will include details.

2. The Committee has previously referred to section 8(1) of the Trade Disputes and Protection of Property Ordinance, which lays down penalties involving compulsory labour for breach of contract by persons employed in certain public services and is not limited in this respect to services whose interruption might endanger the existence or well-being of the whole or part of the population (see especially paragraph 114 of the General Survey). It noted that no penalties had been imposed under section 8(1), but again requests the Government to bring the legislation on this point into conformity with the Convention.

3. The Committee's previous comments referred to section 69(1)(d) and (2) of the Industrial Relations Act, Cap. 88.01, which prohibits teachers from taking part in a strike, subject to penalties of imprisonment involving the obligation to work. It trusts that the Government's review of this matter has now been completed and that the next report will contain details of the measures taken to ensure compliance with the Convention in this respect.

Tunisia (ratification: 1959)

The Committee notes the Government's detailed report and the information supplied on the application of the Convention.

Article 1(a) of the Convention. 1. In its previous comment, the Committee requested the Government to take the necessary measures to ensure that the persons to whom the Convention affords protection, particularly with regard to the freedom to express opinions in the press and freedom of association and assembly, may not be subjected to penalties involving the obligation to work. In its latest report, the Government states that article 8 of the Constitution guarantees the freedoms of opinion, expression, the press, publication, assembly and association, as well as the right to organize, and that these freedoms and rights are exercised under the conditions determined by the law. The

Government states that the penalty of forced labour was abolished in Tunisia by Act No. 89-23 of 17 February 1989.

The Committee notes this statement. Nevertheless, it recalls that several provisions in the national legislation (sections 7, 8, 12, 24, 25 and 26 of Act No. 69-4 of 24 January 1969) place limits on the protection afforded by the Convention to persons who express opposition to the established political order. The Committee recalls that sentences of imprisonment involving the obligation to work must not be imposed as a punishment for expressing political views and it requests the Government to indicate whether Act No. 69-4 has been amended and, if so; to supply copies of the relevant texts.

2. In its previous comments, the Committee requested the Government to provide information on the application in practice of sections 44, 45, 48, 61 and 62 of the Press Code of 1975 and sections 21, 24 and 30 of Act No. 59-154 of 7 November 1959 (as amended by basic Act No. 88/90 of 2 August 1988). It trusts that the Government will make every effort to provide the requested information in its next report.

3. The Committee recalls that Act No. 94-29 of 21 February 1994 provides that compulsory arbitration and requisitioning can only be imposed in essential services. It once again requests the Government to provide a copy of the list of services considered to be essential under this Act as soon as it has been adopted.

4. In its previous comments, the Committee noted that section 13 of the Penal Code provides for sentences of imprisonment involving the obligation to work for persons who participate in an illegal strike and that the legality of the strike is conditional on its approval by the Central Workers' Organization (section 376bis(2) of the Labour Code). The Committee requested the Government to take the necessary measures to ensure that penalties involving compulsory labour may not be imposed for participation in a strike on the sole ground that it has not been approved by the Central Workers' Organization. In its latest report, the Government once again states that participation in an illegal strike may expose the worker to a penalty of imprisonment which may involve normal prison work. The Committee draws the Government's attention to the fact that, according to paragraphs 120-132 of its General Survey of 1979 on the abolition of forced labour, penalties including normal prison labour can be imposed for participation in illegal strikes only where the strikes are illegal because they have been called in essential services. In this respect, the Committee once again requests the Government to take the necessary measures to ensure that penalties involving compulsory labour may not be imposed for participation in a strike on the sole ground that it has not been approved by the Central Workers' Organization.

Turkey (ratification: 1961)

The Committee has taken note of the Government's reports received in November 1995 and October 1997 and of the comments of the Confederation of Turkish Trade Unions (TÜRK-IŞ) and the Confederation of Turkish Employers' Associations (TISK).

I. *Article 1 (c) of the Convention.* 1. With reference to its earlier comments, the Committee notes with interest from the Government's latest report that the Government has submitted to Parliament a Bill amending section 1467 of the Commercial Code (No. 6762 of 29 June 1956), which empowers the master of a ship to use force to bring deserting seafarers back on board to perform their duties. According to the report, the powers of the master under section 1467 would be limited by the Bill to circumstances jeopardizing the safety of the ship or the lives of the passengers and the crew. TISK has referred on this point to the Maritime Labour Law, No. 854, section 14/II of which is said to regulate the conditions under which seafarers can terminate their contracts of employment without prior notice. The Committee requests the Government to supply a copy of the texts in question with its next report.

II. *Article 1(b)*. 2. The Committee has noted the observation of TÜRK-IŞ, that Council of Ministers Resolution No. 87/11945 of 12 July 1987 provides that conscripts in excess of the needs of the military can be obliged to work in public undertakings in lieu of military service, without their consent and under military discipline. The Government states, with reference to article 72 of the Constitution of Turkey, that national service, which is the right and duty of every citizen, may be performed either in the Armed Forces or in the public service. The Government also indicates in its 1997 report on Convention No. 29 supplied under article 19 of the ILO Constitution, that the Military Service Act No. 1111 contains provisions according to which the persons liable to perform military service who are to be posted to public institutions and bodies are determined by lot from among the persons remaining after subtraction of those wishing to pay cash.

3. The Committee wishes to draw the Government's attention to paragraphs 49 to 54 of its General Survey of 1979 on the abolition of forced labour, where it pointed out that "the Conference has rejected the practice of making young people participate in development activities as part of their compulsory military service or instead of it, as being incompatible with the forced labour Conventions"; even where young people engaged in economic development work or work of general interest as part of their compulsory national service are volunteers, and even where such volunteers are excused from compulsory military service, "this should take the form of an exemption and not be used as a means of pressure so that a civic service can recruit a number of people for whom there would in any case not be any place in the armed forces".

4. The Committee requests the Government to supply, with its next report, copies of Resolution No. 87/11945 and the Military Service Act No. 1111, as well as information on their application in practice: for example, what kinds of work the conscripts have to do in lieu of military service, the number of conscripts performing work in the public service, and their proportion in relation to the overall number of conscripts.

III. 5. TISK and TÜRK-IŞ have referred to article 18 of the Turkish Constitution, concerning the prohibition of forced labour. TISK considers that labour law and civil service law provisions similarly show that there is no question of forced or compulsory labour in Turkey in terms of *Article 1* of the Convention. The view of TÜRK-IŞ, though, is that the second paragraph of article 18 violates *Article 1(a) and (b)*, since it states that employment under conditions and procedures determined by law during a prison sentence or detention, or services demanded of citizens at times of emergency, or physical or intellectual work considered as part of citizens' duties in areas determined by the nation's needs, are not considered as forced labour.

6. The Committee would be grateful if the Government would clarify the effect given to the provisions quoted by TÜRK-IŞ in relation to any compulsory work carried on in prisons in conditions falling under *Article 1*.

IV. *Part III of the report form*. 7. The Committee has noted the view of TISK that it would be appropriate for the Government to provide further information on the work of the inspection services in respect to the legislation applying the Convention. It would be glad if the Government would do so.

Uganda (ratification: 1963)

Article 1(a), (c) and (d) of the Convention. In its earlier comments, the Committee referred to (i) the Public Order and Security Act, No. 20 of 1967, empowering the executive to restrict an individual's association or communication with others, independently of the commission of any offence and subject to penalties involving compulsory labour; (ii) sections 54(2)(c), 55, 56 and 56A of the Penal Code, empowering the Minister to declare any combination of two or more persons an unlawful society and thus render any speech, publication or activity on behalf of or in support of such combination illegal and punishable with imprisonment (involving an obligation to perform labour); and (iii) section 16(1)(a) of the Trade Disputes (Arbitration and Settlement) Act, 1964, under which workers employed in "essential services" may be prohibited from terminating their contract of service, even by notice. It notes from the report that these have not yet been repealed, due to the fact that there are so many laws to be revised in order to make them consistent with the 1995 Constitution. The Government expresses its regret and undertakes to pursue these matters. The Committee hopes the Government will be able to include in its next report new information in this respect, and that it will in the meantime indicate any further use made of the provisions.

United Kingdom (ratification: 1957)

The Committee notes the information provided by the Government further to its previous observation and direct request.

Article 1(c) and (d) of the Convention. The Committee notes that section 59(1) of the Merchant Shipping Act, 1995, provides that a seafarer who combines with other seafarers employed on the same ship at a time while the ship is at sea to disobey lawful commands, neglect any duty which is required to be discharged, or impede the progress of a voyage or the navigation of the ship, is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both. According to section 59(2), a ship is treated as being at sea at any time when it is not securely moored in a safe berth. The Government indicates in its report received in October 1997 that section 59 is applicable to seafarers who withdraw their labour in furtherance of an industrial dispute. It also states that it proposes to consult the shipping and fishing industry, as a matter of priority, on whether or not section 59 should be repealed or amended so that it only applies to mutinies and not strikes. The Committee notes that sanctions of imprisonment for a term not exceeding two years are also provided for in sections 117 and 118 of the Act for certain offences (drunkenness on duty, possession of unauthorized liquor) by seafarers employed or engaged in a United Kingdom fishing vessel.

The Committee wishes to point out that sanctions of imprisonment (involving an obligation to perform labour) relating to breaches of labour discipline or as a punishment for having participated in strikes are not compatible with the Convention. Only cases where the safety of the ship or the life or health of the persons on board are endangered would not be covered by the Convention. The Committee therefore hopes that appropriate measures will be taken by the Government in order to amend or repeal the above-mentioned sections of the Merchant Shipping Act, 1995, in order to ensure full compliance with the Convention. It requests the Government to provide in its next report information on any progress made in this regard.

* * *

In addition, requests regarding certain points are being addressed directly to *Afghanistan, Algeria, Angola, Bahamas, Barbados, Belarus, Belize, Benin, Bolivia,* *Burundi, Cameroon, China (Hong Kong Special Administrative Region), Comoros, Costa Rica, Cuba, Djibouti, Egypt, El Salvador, Fiji, France, Gabon, Ghana, Greece, Guinea-Bissau, Iraq, Israel, Italy, Jamaica, Jordan, Kenya, Latvia, Lebanon, Liberia, Lithuania, Mali, Mozambique, Nicaragua, Pakistan, Papua New Guinea, Peru, Philippines, Rwanda, San Marino, Saudi Arabia, Seychelles, Spain, Suriname, United Republic of Tanzania, Thailand, Tunisia, United States, Yemen.*

Convention No. 106: Weekly Rest (Commerce and Offices), 1957

Bolivia (ratification: 1973)

The Committee takes note of the Government's last report and notes the information according to which the Government is considering amending section 31 of Regulating Decree No. 244 of 1943. In this regard, the Committee wishes to draw the Government's attention to the fact that since 1976 it has been commenting on the need to bring national legislation into conformity with the provisions of *Article 8, paragraph 3, of the Convention*, which provides for compensatory rest of a total duration at least equivalent to the period provided for under *Article* 6, irrespective of any financial compensation paid, where temporary exemptions to the weekly rest provisions are made. The Committee once again expresses the hope that the Government will take the necessary measures in the very near future.

Jordan (ratification: 1979)

The Committee takes note of the Government's last report on the application of the Convention and the information contained in its reply to previous comments. The Committee also takes note of the adoption of the Labour Code (Act No. 8 of 1996).

In this connection the Committee notes that, its previous comments notwithstanding, section 60(b) of the Labour Code stipulates that a worker may, with the employer's consent, accumulate weekly rest days in order to take them only once per month. The Committee recalls that for a number of years it has drawn the Government's attention to the fact that this type of provision is not in conformity with the provisions of *Article 6, paragraph 1 of the Convention*, according to which all persons to whom the Convention applies should be entitled to a weekly rest period comprising not less than 24 hours in the course of each period of seven days. The Committee also recalls that the weekly special rest schemes provided for under *Article 7, paragraph 1* may only be applied where the nature of the work, the nature of the service performed by the establishment, the size of the population to be served, or the number of persons employed is such that the provisions of *Article 6* cannot be applied, and after consultations with the representative organizations of the employers and workers concerned.

Furthermore, the Committee would also draw the Government's attention to the provisions of section 59(b) of the Labour Code which provides for payment for hours worked during a weekly rest day at a rate of 150 per cent of normal pay. The Committee recalls that *Article 8, paragraph 3*, stipulates that compensatory rest must be granted, irrespective of any financial compensation, where temporary exemptions are made for the reasons set forth in the first paragraph of this Article.

The Committee therefore asks the Government to take the necessary measures as soon as possible to bring its legislation into conformity with the fundamental provisions of the Convention, particularly *Articles 6, 7 and 8*. The Committee trusts that the

Government's next report will contain detailed information on any action taken to that end and on any progress made in this regard.

Kuwait (ratification: 1961)

The Committee refers to its earlier comments and notes with interest that under the terms of the draft Labour Code in the private sector, which was prepared with the ILO's assistance, provision is made to grant to all workers defined in section 2 of the draft Labour Code, including temporary workers employed for a period of not more than six months and workers at enterprises employing less than five people, a weekly rest period of 24 consecutive hours during the course of each seven day period, in accordance with the provisions of *Articles 2 and 6 of the Convention*. The Committee asks the Government to keep the ILO informed of any developments with regard to the adoption of the Labour Code and hopes that the Government's next report will indicate to what extent national legislation is in conformity with the fundamental provisions of the Convention.

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In addition, a request regarding certain points is being addressed directly to *Djibouti*.

Convention No. 107: Indigenous and Tribal Populations, 1957

Argentina (ratification: 1960)

1. The Committee notes the Government's report which arrived too late to be examined in the last session. The Committee also notes the comments transmitted by the Educational Workers Association of Nequén (ATEN) in February 1996 and forwarded to the Government in March 1996, which alleges the refusal to recognize lands traditionally occupied by the Mapuche communities, in particular, the territory of Pulmarí, and the eviction order for usurpation of these lands.

2. *Articles 11 to 14 of the Convention — Lands*. The Committee notes that according to the allegations made by ATEN, the Government has not respected the assurances given to return the territory of Pulmarí to the indigenous community of Mapuche. The Government has, on the contrary, proceeded to create, by virtue of Decree No. 1410 of 1987, the Pulmarí Interstate Corporation (CIP), whose objective is the social and economic development of the area and the indigenous communities. ATEN alleges that the above Decree also confers certain powers on the Government, such as granting the army authority to administer these territories, representation in the administration of the Corporation, "authorization" to graze CIP livestock on Pulmarí territory "gratuitously" and the right to retain up to 40 per cent of CIP profits. Moreover, ATEN alleges that the six Mapuche communities are represented by only one person who is appointed by governmental decree. The Mapuche community have denounced the prevailing corruption within CIP, the absence of dialogue with the responsible authorities and CIP's petition to the courts requesting the eviction of the Mapuche community from lands recovered.

3. The Committee notes the detailed information provided by the Government in its report with regard to the problems of the Mapuche community in Pulmarí. In particular, the Government states that it had completed an exhaustive audit of CIP, the results of which have been made available to the organizations and the provincial government involved in the administration of this Corporation. Moreover, it has requested the intervention of the National General Defence Council in the legal proceedings brought

by CIP against members of one of the Mapuche communities for land usurpation. The Government indicates that at the moment of transmitting its report, the proceedings were before the Federal Penal Court for a decision on the special appeal to enable the Supreme Court to give an opinion on the eviction of the Mapuche community and the usurpation of lands which they traditionally occupy, temporarily suspending the eviction of the Mapuche community from the contested lands.

4. The Committee also notes that the Government has created an arbitration committee to resolve the dispute between CIP and the indigenous communities. The arbitration committee is responsible for undertaking action to enable the equitable distribution of lands which will satisfy the land claims of the Mapuche communities and enable CIP to achieve the objective for which it was established. The results obtained by this arbitration committee include the recognition of the six Mapuche communities who possess the land titles to the Pulmarí territory, the recognition by CIP of a representative from the indigenous community and the reorganization of CIP's administration. Similarly, with regard to the problem of land awards to the indigenous communities, it was agreed to return to the situation which prevailed in 1994, prior to the land awards, and revise several concessions in order to make land awards which take into consideration the potential of those lands to feed their people, and a census of their livestock. A technical study has also been recommended to determine the fodder capacity of the lands awarded to the indigenous communities in Pulmarí to enable permanent pastures to be established to ensure sufficient fodder reserves in the summer months to supplement the scarcity of fodder during winter. In order to alleviate the situation which the indigenous communities are facing as a result of the dispute, namely greatly restricted access to winter pastures, the National Institute of Indigenous Communities (INAI) has allocated a subsidy to the most affected communities to purchase fodder.

5. The Committee notes the information provided by the Government to the effect that solutions are being sought to the problems that the various Mapuche communities are experiencing in the Province of Nequén and proposals have been made to reorganize certain aspects of CIP's administration of the Pulmarí territory. The Committee recalls that *Article 6 of the Convention* provides that special projects for economic development of the regions inhabited by indigenous peoples shall be so designed to promote the improvement of conditions of life of the indigenous populations. Moreover, the lack of supervision of lands traditionally occupied by the Mapuche communities and the natural resources as well as the lack of influence over the administration of development projects executed on these lands is a grave problem. In particular, this lack of supervision of important natural resources and of livestock fodder throughout the year is threatening the survival of the Mapuche communities in Pulmarí and is contrary to the spirit of the Convention. The Committee therefore requests the Government to enter into direct consultation with the communities affected by the dispute with CIP to enable adequate solutions to be found, not only with regard to the matters before the courts but also to ensure an equitable representation on the administration of Pulmarí Interstate Corporation. Moreover, the Committee requests the Government to provide information on the functions of the Corporation and its connection to the lands traditionally occupied by the indigenous communities.

6. The Committee notes with interest that, in accordance with Act No. 24071 of 24 March 1992, the National Congress of Argentina authorized the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), which was published in the *Official Gazette* on 20 April 1992. Consequently, Convention No. 169 is now included in the national legislation. The Committee also notes the new information provided by the

Government to the effect that a second round of consultations has currently been concluded between the respective ministries, formed as a result of the constitutional reforms of 1994. The Committee requests the Government to keep it informed of any developments in this regard.

7. The Committee had noted the amendment to article 67(15) of the National Constitution of 11 August 1994, which recognizes the ethnic and cultural pre-existence and other rights of the indigenous peoples of Argentina. The Committee notes with interest that, according to the report, although the above constitutional provision requires a regulatory Act, it is nevertheless operative and must be considered as applicable. In accordance with this principle, the Secretary of the President's Office for Social Development issued resolution No. 4,811/96 which lays down the criteria for the authorization to register indigenous communities, simplifying the requirements and regulating the participation of the provinces. This registration recognizes that the indigenous communities operate on a communal basis, allows the regularization of landownership (as in the case of the indigenous community of Kolla de Finca Santiago, where more than 3,000 families have obtained common ownership of the lands traditionally occupied) and takes into account the criterion of self-definition as a fundamental right of indigenous communities. The resolution was issued on the basis of operational character of the constitutional provision. In this respect, the Committee requests the Government to keep it informed of any development with regard to the regulation of the constitutional provision and to forward a copy of the text when it is issued.

Bangladesh (ratification: 1972)

1. The Committee notes the Government's report. It recalls that an armed conflict has been going on in the Chittagong Hill Tracts (CHT) region between government forces and the *Shanti Bahini* (Peace Force), the armed wing of the *Parbattya Chattagram Jana Sanghati Samity* (PCJSS, United Peoples' Party of the CHT) for over 20 years. It notes with interest that a Peace Agreement was signed between the Government and the PCJSS on 2 December 1997, a copy of which the Committee has examined. The Committee hopes the Government will provide detailed information in its next report on the implementation of this Peace Agreement.

2. The Committee notes that, under section 1 of the General Chapter of the Peace Agreement, the CHT is recognized as a region inhabited by tribal peoples and that both sides recognize the need for protecting the characteristics and realizing the overall development of the CHT. It further notes that the Peace Agreement contains a framework for amending the Hill Tracts Districts Local Government Council Acts (Acts No. XIX, XX and XXI of 1989) providing the three district councils with more regulatory and administrative powers. It also provides for the establishment of a regional council, consisting of ex officio members of the district councils as well as other members, with reserved seats for tribals, indirectly elected by the district councils, with regulatory, supervisory and coordinating powers, as well as the establishment of a ministry on Chittagong Hill Tracts Affairs with a tribal minister. The Committee notes that the Peace Agreement also contains provisions for the partial demilitarization of the CHT and amnesty for those armed members of the PCJSS who surrender their arms within a certain time. Finally, the Committee understands that legislation to implement the Peace Agreement has been adopted and is being implemented. The Committee requests the Government to provide it with copies of the relevant legislation and, taking into account the present observation, to clarify the relationship between the Peace Agreement and the

new legislation and their respective force under national law, as well as to provide detailed information on their implementation.

3. *Legislation in force.* With reference to its previous comments regarding the concerns of tribal representatives over the possible repeal of the Chittagong Hill Tracts Regulation (No. 1 of 1900) through the Hill Districts (Repeal and Enforcement of Law and Special Provision) Act, 1989, the Committee notes from the Government's report that a committee has been set up to examine the effects of this possible repeal. The Committee understands in this regard that the 1989 Act has not yet entered into force and that a Bill is before Parliament to repeal it, and requests the Government to keep it informed on the status of the Act. The Committee also notes that under section 11 of the Chapter of the Peace Agreement on the Hill Tracts Regional Parishad (council), the regional council to be established is to provide the Government with advice and proposals with regard to any contradiction that may exist between the 1900 Regulation and related laws and regulations, and the 1989 Local Government Council Acts. The Committee also notes that under the Peace Agreement the Government may formulate any law regarding the CHT subject to discussion and the advice of the regional council. In this regard, the Committee requests the Government to provide information on the legal status of the consultation and advisory powers of the regional council, and on the way in which they have been exercised in practice.

4. *Articles 11 and 14 of the Convention.* With reference to its previous comments regarding the power of the district councils to allocate land rights, the Committee notes the Government's comment that a solution for this issue has been provided for in the Peace Agreement. The Committee also notes that, under section 26 of the Chapter of the Peace Agreement on Chittagong Hill Tracts Local Government/Hill District Council, no lands in a particular district can be leased out, sold, purchased or transferred without prior permission of the relevant district council, regardless of laws that may stipulate otherwise, with the exception of reserved forest, the Kaptai Hydro-electric Project Area, the Betbunia Satellite Station area, state-owned industrial enterprises and government-owned lands. Please indicate the proportion of the Chittagong Hill Tracts covered by this exception. The Committee also understands that the Government cannot acquire or transfer any lands, hills and forests under the jurisdiction of a district council without its prior approval.

5. In this respect, the Committee recalls the concern it has previously expressed that the Government should act with dispatch to resolve conflicting land claims between tribals and non-tribals in the CHT, taking into account the number of illegal settlements and the large number of tribals who had fled from their lands. While it is considering the matter in detail in a request addressed directly to the Government, the Committee requests the Government to provide a full report on developments in this regard. This should include information on the procedures established to resolve conflicts, and on their implementation.

6. *Return of tribal refugees.* The Committee notes that, as stated in section 1 of the Chapter of the Peace Agreement on Rehabilitation, General Amnesty and Other Issues, an agreement was signed between the Government and tribal refugee leaders on 9 March 1997 at Agartala, Tripura State, India, with regard to the return of tribal refugees staying in Tripura State. It notes that their return under this scheme will continue unaltered within the framework of the Peace Agreement and that the internally displaced tribals in the three hill districts will be rehabilitated through proper identification by a task force. In this respect, the Committee requests the Government to inform it of the total number of tribal refugees that fall within the rehabilitation scheme, the number of tribal refugees that have been repatriated under the Peace Agreement so far, the assistance they have received upon

repatriation and any problems that may have been encountered during and after rehabilitation. It also requests the Government to inform it of the activities of the task force responsible for the rehabilitation of the internally displaced persons, including information on the definition and method used in ascertaining their status, their total number, the number rehabilitated, the assistance they have received and problems that may have been encountered during and after rehabilitation.

7. In addition to the tribal refugees in Tripura State, most of whom have been documented, the Committee understands that a substantial number of undocumented tribal refugees are staying in Mizoram State, India, and that some of these have also been repatriated and rehabilitated. The Committee requests the Government to provide any available information on the total number of undocumented tribal refugees, the number rehabilitated and the assistance they have received. Furthermore, the Committee has received reports that the added pressure of rehabilitated refugees on agricultural activity and food supplies has led to famine in certain areas of the CHT. It has also received reports that the non-deliverance of rehabilitation packages has contributed to this situation and that especially the returnees from Mizoram State have been the victim of this famine. The Committee understands that the Government has supplied food to the affected areas, and requests it to provide information on the number of people affected, and measures taken to alleviate the plight of these people, as well as information on the causes of the food shortage and measures envisaged to provide for a sustainable solution of the problem.

8. *Articles 2 and 10. Alleged human rights violations.* With reference to its previous comments, the Committee notes that the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment has stated that the continuing flow of information about abuses committed by the army in the CHT suggests that the Government should establish effective and independent means to monitor the army's counter-insurgency methods in the area (UN document E/CN.4/1997/7). In addition, the Committee continues to receive reports of human rights violations, including reports on violations committed after the signing of the Peace Agreement, against the tribal inhabitants of the CHT. These include reports on the abduction in the night of 11-12 June 1996, of Kalpana Chakma, the Organizing Secretary of the Hill Tracts Women Federation, which, the Committee understands, is of particular concern to the tribal inhabitants of the CHT since her fate apparently remains unknown and the final report of the three-member inquiry committee was not made public. The Committee requests the Government to provide detailed information on measures taken or contemplated, especially within the framework of the Peace Agreement and its implementation legislation, to protect the life and property of the tribal inhabitants of the CHT.

9. *Planning and execution of development projects (Articles 2, 6 and 27).* The Committee understands that a Ministry on Chittagong Hill Tracts Affairs, as well as an interim Regional Council, has been set up. It requests the Government to provide information on their composition, mandate and powers. It understands that, apart from its administrative and regulatory powers, the Ministry plays an important role in the formulation and planning of development programmes. The Committee requests the Government to provide information on the activities of the Ministry relating to development, including any coordination and executive activities it may undertake. Please provide further information on the impact of the different development projects undertaken or under consideration on the socio-economic and cultural development of the tribal inhabitants of the CHT, including assistance from the International Labour Office which is being proposed, and the modalities for including tribal participation in the formulation and evaluation of the projects outlined in the report. The Committee would also appreciate

receiving information on the modalities of tribal participation in the planning and implementation phases of programmes and projects undertaken under the auspices of the various international agencies.

10. The Committee is raising additional points in a request addressed directly to the Government.

Brazil (ratification: 1965)

1. The Committee notes the Government's report presented following the last session.

2. *Invasion by "garimpeiros" (independent gold miners).* The Committee noted the information provided by the Government's representative at the 83rd Session of the Conference (1996). The Conference Committee was informed that the number of *garimpeiros* in indigenous lands was increasing.

3. In this respect, the Committee notes with interest the information provided by the Government in response to its previous comments to the effect that the fourth operation to expel *garimpeiros* from the Yanomami territory took place between November 1997 and January 1998 resulting in the expulsion of 800 *garimpeiros*, the prosecution of 324 people, the imprisonment of 17 others and the prohibition of a clandestine radio station. Moreover, seven tons of prospecting equipment used by *garimpeiros* were confiscated in close proximity to the Venezuelan border and 26 persons were prosecuted. The measures taken to prevent a recurrence of the massive influx of *garimpeiros* into the Yanomami reserve, which have been agreed with the Venezuelan authorities, include the destruction of 35 landing strips, increased supervision of Boa Vista airport, the principal port of entry for *garimpeiros*, and a reduction in the number of flights into the region affected by illegal mining.

4. The Committee notes, moreover, that a support team has been brought into the Yanomami territory to locate possible new centres of *garimpeiros* through aerial surveys and to proceed with their immediate disbandment. The Government also states that the federal police maintains permanent supervision of four contiguous borders with Venezuela and Guyana to prevent the clandestine entry of *garimpeiros* and mining equipment. The Committee notes, moreover, that other measures of an environmental nature to restore lands damaged as a result of illegal mining are being implemented by the indigenous communities concerned to enable them to become self-sufficient and the prohibition of bartering provisions for gold has discouraged contact with indigenous peoples. The Government also indicates that various programmes are being implemented to improve the living conditions of the communities who populate the border regions and to tighten border controls. The Committee notes with interest that the Government has increased cooperation with the Venezuelan Government and has established a working group to combat illegal mining in the Yanomami territory. The Committee requests the Government to keep it informed of the progress and effects of programmes to expel the *garimpeiros* from Yanomami territory in the future.

5. *Decree No. 1775 of January 1996.* The Committee noted the adoption of this Decree which provides for decisions on the demarcation of indigenous lands which remain to be regularized. The Committee had expressed its concern with regard to the effect of this Decree in the area known as Raposo do Sol, and in particular, the decision handed down under Ministerial Resolution No. 80, which redefines the borders of these indigenous lands and, in fact, would reduce the area originally identified in 1993 by the National Indian Foundation (FUNAI) by approximately 300,000 hectares and would divide

it into five parts, thereby creating permanent enclaves of *garimpeiros* and excluding over 20 indigenous villages from the area to be demarcated.

6. The Committee notes FUNAI's intention, in light of the indigenous and non-indigenous peoples' appeal against the administrative decision, to request the Ministry of Justice to re-examine the administrative decision handed down respecting the demarcation of the indigenous lands of Raposo do Sol. FUNAI will also be requesting the Ministry of Justice to carry out additional surveys in the region to enable a new decision to be reached, which will subsequently be transmitted to the President of the Republic to pronounce on the demarcation and the previous administrative decision issued in respect of the indigenous lands in question. The Committee requests the Government to keep it informed of developments in this regard.

7. *Articles 2 and 27 (responsibility for coordinated action) and Articles 19 and 20 (health) of the Convention.* The Committee had expressed its concern with regard to the alleged plans to decentralize the health services of indigenous peoples to state and municipal governments and, in particular, the potential lack of policy coordination in respect of indigenous populations, as laid down in the Convention.

8. The Committee notes the Government's statement to the effect that the restructuring of FUNAI has not progressed since the Government's last report, since these reforms are included in the global reforms of the administrative service currently being examined by the National Congress. The Committee notes, moreover, that according to the Government, the lack of coordination between the National Health Foundation (FNS) and FUNAI in respect of health programmes is a temporary and circumstantial matter arising out of the restructuring of both institutions.

9. With regard to the health services for indigenous peoples, the Committee notes that FUNAI has a special function of direct intervention to resolve health problems whereas the function of the FNS, through Indigenous Health Coordination, is one of prevention, sanitation, disease control, immunization and human resource training. The Committee notes, moreover, that technical equipment used in the indigenous peoples' health services is under the control of the FNS regional authorities and, irrespective of FNS restructuring with regard to planning, there is no lack of coordination in the medical attention given to indigenous peoples.

10. With regard to the shortage of health assistants in the Yanomami Health District to fill the 408 positions which have been vacant since 1996 (219 in Roraima and 189 in Amazonia) and subject to open competition, the Committee notes the Government's information to the effect that 220 of the 408 health assistants recruited are already exercising their functions. Moreover, the Government states that further open competitions will be held throughout the country to recruit new health professionals and that 2,401 qualified health professionals are employed by the FNS, 47 per cent of which are members of the indigenous communities. In 1997, the Government made available more than 22 million reales (approximately US$20 million) for the health care of indigenous peoples, designating more than 50 per cent for the provinces of Amazonia where over 61 per cent of the indigenous peoples of the country have settled.

11. Moreover, the Committee notes with regret that the growth rate of the Yanomami and other indigenous populations (Ye'kuana (Maiongong)) were decreasing in number. In this respect, the Committee notes that the Government has recently taken preventative measures to improve the quality of life and health in the affected areas and has completed several projects to improve basic sanitation and health care, directly benefiting over 96,000 indigenous peoples and 238 villages. The Committee also notes the concern expressed by the Government in respect of the falling growth rates of the

Yanomami population and the proposals by the Yanomami Health District (DSY) to introduce emergency measures to eradicate malaria and other epidemics which threaten the survival of this indigenous group. The Committee urges the Government to continue to make every effort to ensure adequate, sustained and effective human and financial resources to prevent the extinction of the Yanomami peoples and to take the necessary measures to ensure medical and sanitary services are provided to enable the eradication of diseases which have been transmitted by Brazilian settlers.

12. *Articles 11 to 14 (land).* The Committee notes the position of FUNAI in respect of the displacement of indigenous peoples due to the construction projects of four hydroelectric power plants in the Vale do Ribiera (three of which are to be undertaken by the state enterprise (CESP) and the fourth by a private enterprise (Brazilian Aluminium Company — CBA)). These projects would affect the Guaraní areas, which had already been demarcated in the State of São Paulo (Agenor de Campos, Aguapeú, Guaraní de Barragen and Peruíbe).

13. The Committee notes the information provided by the Government, in particular, the establishment of a ten-year plan to monitor all construction projects of hydroelectric power plants on indigenous lands and to evaluate the possible impact of these plants on local indigenous populations. The Committee notes, moreover, the Government's statement to the effect that it does not propose to evaluate the impact of the construction of the hydroelectric power plants at Tijuco, Funil, Batatal and Itaóca on the indigenous population, since judicial proceedings have been instigated as a precautionary measure, and only FUNAI may pronounce on the delivery of licences for construction projects of this nature following receipt of reports which assess the environmental impact of the power plants on the local indigenous population. The Committee requests the Government to keep it informed of the situation regarding the construction of these hydroelectric power plants and the indigenous peoples who will be affected by these plants when construction work is under way.

14. The Committee, moreover, had requested information on the alleged eviction on 23 December 1996 of the indigenous peoples of the Guaraní-Kaiowá ethnic group from areas which had already been demarcated by FUNAI in Sucuriy, Municipality of Maracaju in the State of Mato Grosso do Sul. In this respect, the Committee notes with interest that a judicial agreement has been reached with the Guaraní-Kaiowá ethnic group which, under the Decree of April 1998, provides for their occupation of 65 hectares of an area of 535 hectares. The Committee requests the Government to inform it of the definitive solution to this matter and, in particular, when the Guaraní-Kaiowá ethnic group have occupied the totality of lands agreed.

15. *Article 15 (labour).* The Committee notes the Government's statement that FUNAI's disciplinary body has still not pronounced in respect of the administrative proceedings investigating the involvement of FUNAI members in the illegal employment of indigenous labour in Mato Grosso do Sul and requests the Government to inform it when a decision has been issued. The Committee also notes that, according to the Government, the absence of employment contracts in distilleries in Mato Grosso do Sul has given rise to the exploitation of indigenous labour and with a view to improving this situation FUNAI, together with the Public Labour Ministry and the Indigenous Missionary Council, have examined various specimen employment contracts in order to establish common standards in employment contracts offered to indigenous workers. Similarly, the Committee notes that the Labour Inspectorate mobile coordination unit has observed no cases of forced labour amongst indigenous workers during the period covered by the Government's report. The Committee requests the Government to keep it informed of any

progress achieved in this respect, in particular, of the Public Labour Ministry's decision with regard to the type of contract to be introduced in the distilleries of Mato Grosso do Sul to regulate the conditions of employment of indigenous workers.

16. *Legislative situation.* The Committee also notes that Bill No. 2057 of 1991 respecting indigenous status and Convention No. 169, are still under examination by the Committees of the National Congress and that the Government has affirmed its intention to keep the Committee informed on the adoption of these instruments and hopes the Government will inform it of any progress achieved in this respect.

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In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Bangladesh*.

Convention No. 108: Seafarers' Identity Documents, 1958

Russian Federation (ratification: 1969)

The Committee recalls the conclusions and recommendations adopted by the Governing Body in March 1996 following the representation under article 24 of the Constitution made by the Seafarers' Union of Russia. The committee set up by the Governing Body to examine the representation requested the Government to submit a report by September 1996 to be examined by the Committee of Experts concerning the application of the Convention. No report was received. In its subsequent comments, the Committee again requested a report due in September 1997.

The Committee noted with regret that this report was only received in November 1997, at a time when it was too late for it to be reviewed.

The Committee now notes that the report due in September 1998 was received with annexes only on 19 November 1998.

The Committee notes that the Government states that the 1998 report is based on the 1997 report and therefore the Committee will consider both as a whole.

The Committee recalls the principal questions of law and practice raised in the 1995 representation: (i) the definition of the term "seafarer" and consequently entitlement to the identity document; (ii) the refusal of the competent authority in Novorossiisk to issue identity documents to seafarers who are citizens of the Russian Federation, without distinction as to which shipowner is their employer; (iii) the requirement that the identity document be surrendered to the issuing authority for safe keeping on completion of each contract; (iv) the right of citizens who are seafarers to apply personally for their identity document; (v) the failure to consult with shipowners' and seafarers' organizations both as to the categories of persons to be recognized as seafarers, and concerning the form and content of the identity document; and (vi) complications resulting from the requirement that the national passport must be surrendered in order to receive the seafarers' identity document.

1. The Committee notes with interest that according to the Government's report and the copies of legislative texts, seafarers may henceforth apply personally for their identity document for work on Russian or foreign flag vessels, and the requirement that the seafarer must surrender his national passport has been abolished.

2. The Committee recalls the conclusions of the Committee of the Governing Body, in particular paragraph 47, and considers that the issuance to seafarers *(Article 1 of the*

Convention) of an identity document to remain in their possession *(Article 3)* is distinct from the limited conditions under which the document may be used, as set forth in *Article 6*.

The Committee stresses the essential purpose of the identity document, as set forth in *Article 6(1)* of the Convention, which is to allow the seafarer to take temporary shore leave.

The application of the provisions of *Article 6(2)* will depend on the form of the identity document, and cannot be invoked to transform the essential nature of an identity document, regardless of the form chosen, into a passport. The latter is by definition a national document issued or refused, used, retained and surrendered according to national procedures based on national legislation. As stated in *Article 2(1)*, only in exceptional cases where it is impracticable to issue an identity document to special classes of seafarers may the Member issue instead a passport indicating that the holder is a seafarer, in which case the passport "shall have the same effect as a seafarers' identity document for the purpose of the Convention". Thus, in exceptional cases it is the passport that becomes an identity document, and in no case does the identity document become a passport. Therefore, the identity document cannot be referred to as a "seafarers' passport".

Unlike a passport, the seafarers' identity document is issued by a national authority pursuant to a Convention of the International Labour Organization. Moreover, *Article 4(2)* of the Convention requires the document to contain "a statement that the document is a seafarers' identity document for the purpose of this Convention". The Committee notes that the specimen document sent by the Government contains this statement.

Consequently, the Committee notes that the governing text as regards the identity document is the Convention (unless it provides otherwise), and *not* national legislation and regulations applicable to passports, travel documents and exit documents, etc.

As the statement in the identity document pursuant to *Article 4(2)* refers to the *purpose* of the Convention, the Committee considers it necessary to recall that the primary purpose of this Convention was to facilitate temporary shore leave for the seafarer by means of a reciprocally recognized identity document, this being necessary due to the special calling of the seafarer.

With regard to obligations under the Convention, the identity document is not a travel document per se, and any decision taken by the national authority to avail itself of the provisions of *Article 6(2)* (joining the ship, transit, repatriation, etc.) cannot alter the fact that this remains an identity document, regardless of the form and content. The title of the Convention is *Seafarers' Identity Documents*, and the Committee considers that any reference to the document as a "passport" should be deleted.

3. Having established that it is the Convention that defines the purpose for which the national authority shall issue the identity document to its citizens who are seafarers, the Committee must now consider who is a seafarer, which thus brings to the fore the right of the citizen to the status of seafarer. The Committee notes the Government's contention that this is the root problem from which all other problems of application of the Convention flow.

The Committee notes from the drafting of *Article 1(1)* that the term seafarer is used in a broad and almost generic context to mean generally the personnel on board when the ship is at sea. The Committee considers that this vision of the seafarer is both logical and in keeping with the essential *purpose* of the Convention which is to grant temporary shore leave, thus avoiding the intolerable hardship and privation resulting from long periods when the ship is at sea. This is a basic human need for all members of the crew.

The Committee further notes that a provision of the Convention *(Article 1 (2))* devolves to the competent authority (after consultations) the responsibility for determining *in the event of doubt* whether any category of persons is to be regarded as seafarers. Recalling the purpose of the Convention, the Committee understands the concept of seafarer as set forth in paragraph 1 of the Article in terms of a functional analysis, and that as a general rule, to which there may be exceptions, the crew are seafarers.

While the Committee accepts that the issuance of the identity document may be subjected to documentary evidence of the existence of a contract or the intention of a shipowner to conclude a contract for service at sea, its issuance constitutes an affirmative act recognizing the occupational status of the person as a seafarer.

The specificity of the seafaring profession, with long periods at sea followed by long periods at home, is such that the occupational status cannot and does not flow according to periods of contractual engagement. The Committee considers that once the seafarer's status has been established by the issuance of the identity document, the seafarer's right of continuous possession of the document attaches. The Committee notes with concern that according to the Government's report the most recent legislation retains the provisions requiring the seafarer to surrender his identity document to the issuing authority for safe keeping within one month after the end of his contract. The Committee again observes that this legislation and practice are contrary to *Article 3* of the Convention.

With regard to the status of the seafarer seeking employment, the Committee recalls the terms of *Article 2(2)* according to which a State party *may* issue an identity document to a *seafarer* registered at an employment office within its territory. This permissive clause removes any doubt as to whether the occupational status as a seafarer is subordinated to the existence of an employment contract. If this were not the case, there could be no unemployed seafarers.

The Committee further notes that while the Convention does not require issuance of the identity document to a seafarer seeking employment, the possibility of so doing within the purview of the Convention means that the status as a seafarer is not affected by periods of unemployment.

4. The Committee recalls that the lawful purposes for which the document may be used are set forth in *Article 6* and will depend on the form chosen for the identity document. The Committee notes that the form the Government has chosen for the identity document is such that it permits international travel. The Committee recalls, however, that the document is governed by the text of the Convention and not by internal regulations concerning the security of the State, exit from the territory, illegal emigration, black market value of travel documents, etc.

The Committee recalls that the dual purpose of the identity document is for entry *(Article 6)* and readmission *(re-entry)* to the issuing territory *(Article 5)*, and that "any other purpose approved by the authorities" *(Article 6(2)(c))* refers to a request made for entry, not exit.

Therefore, the Committee requests the Government to take all legislative and regulatory measures necessary to implement the aforementioned points, so as to distinguish the identity document issued pursuant to and governed by this Convention from passports and other documents of a purely national character.

The Committee is addressing a request directly to the Government on certain other points.

[The Government is asked to supply full particulars to the Conference at its 87th Session and to report in detail in 1999.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Belarus, Bulgaria, Djibouti, Guinea-Bissau, Iceland, Kyrgyzstan, Latvia, Luxembourg, Poland, Romania, Russian Federation, Sri Lanka.*

Convention No. 110: Plantations, 1958 [and Protocol, 1982]

Requests regarding certain points are being addressed directly to the following States: *Côte d'Ivoire, Ecuador, Philippines.*

Convention No. 111: Discrimination (Employment and Occupation), 1958

Afghanistan (ratification: 1969)

1. The Committee notes with regret that no report has been received from the Government. It must therefore refer to its previous observation in which it noted with deep concern the communication of the International Confederation of Free Trade Unions (ICFTU) dated 4 August 1997, alleging violations of the Convention by the Taliban authorities. The ICFTU comments included two reports by Amnesty International (AI) on grave abuses of human rights of women in Afghanistan (November 1996 and June 1997). The Committee had noted that, according to the ICFTU communication and the attached reports, the Taliban armed militia has restricted women to their homes and has banned them from going to work; that girls and women have been banned from going to school and attending institutions of higher education; and that in several instances, women defying these orders have been beaten in public by Taliban guards using long chains. The Committee also noted that the prohibition by the Taliban authorities barring women staff from participating in ongoing programmes outside the health sector had severely curtailed the humanitarian activities of the United Nations agencies and non-governmental organizations. The above-mentioned communications indicated that, according to UNICEF estimates, 700,000 women have been widowed after nearly 20 years of war in Afghanistan and that most of these women are now not permitted to work to support themselves and their families, although some exceptions have been made. The women who have been given permission to work are said not to be secure in the areas controlled by the Taliban and some have been beaten and humiliated in public. The Committee had noted that the above-mentioned communications indicated a lack of respect for the obligation to apply to girls and women the fundamental human rights covered by the Convention. The Committee was also conscious that measures of the type described have imposed considerable hardship on the families of the women concerned, as well as on those who benefit in various ways from the activities undertaken by women.

2. The Committee notes with grave concern the information contained in the Report of the Special Rapporteur of the United Nations Commission on Human Rights (A/52/493 of 16 October 1997) and the latest Report of the Secretary- General (E/CN.4/1998/71 of 12 March 1998) on the current human rights situation in Afghanistan. The Committee notes not only that the widespread discrimination imposing harsh conditions upon women and girls remains one of the most preoccupying aspects of the situation of human rights in Afghanistan, but that the situation dramatically deteriorated throughout 1997 and 1998. Both reports confirm the details of the above-referenced

communications and indicate that women continue to be denied the right to paid employment outside the home (except within the health sector), to freedom of association and to choice in matters pertaining to personal dress and transportation.

3. The Committee has also taken notice of the following texts of regulations issued by the Department for the Preservation of Virtue and the Prevention of Vice of Afghanistan restricting women's employment:

(i) A Declaration issued in December 1996, which is accorded the status of a legal document, provides that Afghan women are not to apply for any job in foreign agencies and are not to go to those agencies. The Declaration states that "..., if [women] are chased, threatened and investigated by [the Department], the responsibility will be on them".

(ii) Two sets of Regulations, both dated 16 July 1997: one for all international and national agencies, and one for hospitals and clinics. These Regulations set forth, inter alia, the following restrictions on women's employment: (a) women are not allowed to be employed in governmental departments or international agencies and women should not leave their residences; (b) assistance to widows and needy women is to be provided through their male blood relatives without the employment of females; (c) women are allowed to work only in the health sector, at hospitals and clinics; (d) Afghan women cannot be appointed as senior female staff in foreign-owned hospitals; (e) wherever women are employed they should preserve their dignity, walk calmly and avoid creating noise by their footsteps; (f) no Afghan woman is allowed to travel in a vehicle with foreigners; (g) women are allowed to work in vocational sectors such as embroidery, weaving, etc., in which case they do not leave their houses; the Department should be informed beforehand through their blood relatives; and (h) if international agencies or Afghan non-governmental organizations decide to employ or assist women, they should first obtain permission from the Department.

4. The above-referenced Regulations issued by the Taliban authorities constitute a further confirmation of the explicit policy of discrimination against women and girls in education and employment. The Committee notes that UN estimates indicate that as many as 150,000 women in Kabul have been barred from paid employment, including about 30,000 war widows who are the sole income earners for their families. It is believed that only 20 per cent of the female workforce formerly employed in the health sector is currently working in that sector. When Kabul's university opened in 1997, only male students were allowed. More than 100,000 girl students in Kabul are barred from obtaining an education and women teachers, who formerly constituted over 70 per cent of the teaching staff, are obliged to remain home. The Committee notes from the Report of the Special Rapporteur that restrictions have also been placed on women's employment in the northern part of the country which is controlled by the United Islamic Salvation Front. Moreover, male education has suffered significantly since the banning of female employment and education by the Taliban authorities in areas that are under Taliban control, and even the delivery of humanitarian assistance has been seriously obstructed. The Committee urges the Government to provide detailed information on all of the measures being taken to remove the restrictions and prohibitions on females in education and employment.

5. The Committee takes due note of a UN communication including the decision of the Kabul Caretaker Shura of 28 April 1998 that "in connection with the work of female professionals in the Islamic Emirate of Afghanistan, a commission composed of the Minister of Mines and Industries, the Minister of Public Health and the Deputy

Minister of Central Statistics [...] should fully seek legal advice in resuming [employment of] female professionals". The decision further states that, in the event of positive advice (permitting employment) "all ministries, offices, and foreign organizations should take the necessary action to assign female professionals through the Ministries of Mines and Industries". The Committee hopes that the decision cited above may signal a change in the restrictive policy on women's employment; it requests the Government to indicate whether any female professionals have been hired or rehired pursuant to this decision, and to provide general information on the extent to which this decision has been applied in practice.

6. *Discrimination on the ground of political opinion.* The Committee notes with concern that, according to the 1998 Report of the UN Secretary-General, former members of the Communist Party have suffered discrimination in employment. The report states that, in 1997, "some 70 professors and lecturers from Kabul University and the Polytechnic Institute had been fired recently by the Taliban authorities on account of alleged association with the previous communist authorities". Further, according to the report, these measures have also negatively affected 48 employees of the Taliban Ministry of Public Health and 122 military prosecutors. The Committee hopes the next report will contain full information on all measures taken to ensure non-discrimination in employment and occupation on the basis of political opinion.

7. The Committee notes again with deep concern that no response has been received to its 1996 and 1997 observations, including the communication transmitted by the ICFTU, which requested detailed information. Therefore, the Committee urges that full information be provided in the next report on all points covered in its comments. The Committee feels compelled to point out that the above-described developments in the country constitute not only a violation of the Convention but also a serious violation of basic human rights that should be guaranteed to all women as well as men.

[The Government is asked to supply full particulars to the Conference at its 87th Session.]

Angola (ratification: 1976)

The Committee notes from the Government's report in response to its previous observation that the draft General Labour Act has not yet been adopted.

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to supply full particulars to the Conference at its 87th Session.]

Bangladesh (ratification: 1972)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

> 1. In its previous observations, the Committee has sought to encourage the Government to overcome the obstacles to women's increased participation in employment. While most of the information provided by the Government in its report was reflected in the Committee's previous observation, the Committee also notes the information contained in the Government's report on the Convention on the Elimination of All Forms of Discrimination against Women (United Nations document CEDAW/C/BGD/3-4 of 1 April 1997), according to which the Government has initiated various programmes aimed at reducing the very high level of illiteracy among girls and women. These programmes include the "Food for Education Programme" and an increased commitment to ensuring free, universal and

compulsory primary education. In this regard, a separate Division of Primary and Mass Education, responsible to the Prime Minister, was established in 1992. The Committee also notes that a secondary-level scholarship programme for girls outside metropolitan areas has been initiated with the objective of retaining female students at the secondary stage and thereby promoting higher education. This measure also assists in controlling population growth by discouraging girls from marrying before 18 years of age. As a result of these schemes, and many initiatives taken by non-governmental organizations (NGOs), the number of girls in secondary schools has increased from 33.9 per cent in 1990 to 47 per cent in 1995. Campaigns have also been launched by the Government and NGOs to encourage girls' education through radio, television and videos. A special communications initiative called "Meena" has also been launched as part of the mobilization and awareness raising programme to promote the social worth of south Asian girls. On this point, the Government has expressed concern that the educational curricula are not gender sensitive and often reflect the traditional roles of men and women, thereby reinforcing those roles. The Committee hopes that this issue will receive more attention, and that the Government will also take active measures to reach its target of ensuring that females comprise 60 per cent of all recruitment for primary-school teachers. The Committee asks the Government to continue to provide detailed information on the progress made to enhance the literacy rate of girls and women.

2. As concerns the labour force participation of women, the Government states that, generally speaking, employment opportunities are unequal for women, as a large majority of women live below the poverty line and do not receive education. Social constraints and norms relating to women's role also contribute to their lower employment outside the home, but women are the major contributors to the household economy. In its previous comments, the Committee noted that quota provisions had been introduced to increase the recruitment of women in the public service. In addition to recruitment on merit, 10 per cent of officers' posts and 15 per cent of staff positions at the entry level are reserved for women. The age limit for women to be eligible for entry to a government job is 30 years, whereas it is 27 years for men. According to the Government's report on the CEDAW, recent experience has shown that although women's reserved quotas are not being filled, the percentage of women recruited generally in the civil service has been higher than the fixed quotas, which is accounted for by the extent to which women are recruited on the basis of merit. At present, women constitute 7 per cent of gazetted officers and 7.4 per cent of other posts. The Government also states that the impact of the quotas is negligible, as very few new posts are available. Over the last five years, women have comprised only 14.4 per cent of all recruits into the public service.

3. In relation to other employment, the Committee notes that women's participation in the industrial sector is greatest in the construction industry, where many work as manual labourers. Women comprise nearly 24 per cent of all manufacturing workers and have been joining this sector as they have been partly displaced from the agricultural sector due to impoverishment and the adoption of new technologies. In urban areas, women are found mostly concentrated in low-paid manufacturing sector activities or in the recently emerged export-oriented labour-intensive industries. The garment and shrimp processing industries are the highest employers of women labourers. Women are also found in electronics, food processing, beverages, apparels, handicrafts and similar areas. The Government states that these industries are predominantly filled by women due to traditional perceptions about how such work is suited to their "natural abilities" and because these industries absorb unskilled and low-paid labour. The Government also indicates that the manufacturing sector does not always provide the minimum required wage level and work environment, as stipulated in the labour legislation. As concerns other employment, 43 per cent of women work in the agriculture, fisheries and livestock sectors but 70 per cent of those women work as unpaid family labourers. The Government's report on the CEDAW provides detailed information on the measures taken by government agencies and NGO programmes to promote employment opportunities for women in the rural areas.

4. The Committee notes the Government's statement that women's socio-economic status differs from their legal status. While the Government expresses its determination to take steps to eliminate discrimination against women through legal measures, it also concedes that

women cannot even enjoy those rights provided by existing laws, due to the lack of enforcement. According to the Government, the disparity between the rights women have by law and what they actually enjoy arises partly from the lack of knowledge of women and men about internationally and nationally recognized women's rights and the lack of commitment by the judiciary and law enforcement agencies. Moreover, the Government states that various procedures make it difficult for women to access and use the judicial system, including, for example the esoteric language, the lengthy and costly procedures and the fact that agencies are often hostile or unsympathetic to women. Noting the establishment of a high-level committee headed by the Minister for Law, Justice and Parliamentary Affairs to examine and update existing laws so as to eliminate all forms of discrimination, the Committee requests the Government to provide information on the outcome of this review. It also requests the Government to indicate the measures being taken to gender-sensitize and train the judiciary, labour inspectors and others concerned with implementing legislation designed to ensure equality for women.

5. Noting also that a proposal has been submitted for approval to revise the recruitment procedures to permit or facilitate women to enter the police force, the Committee asks the Government to provide further information on any measures taken in this regard. Please also provide information on any measures being taken to ensure that women receive the necessary training to participate actively in the public service and at higher levels of organizations, where their representation is still negligible.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Chile (ratification: 1971)

1. For more than ten years, the Committee has requested that the Government explicitly repeal Decrees Nos. 112 and 139 of 1973, 473 and 762 of 1974, 1321 and 1412 of 1976, granting broad discretionary authority to university deans to suspend employees from academic and administrative posts. Similarly, for more than ten years, the Committee has asked the Government to repeal explicitly section 55 of Legislative Decree No. 153 on the By-laws of the University of Chile. The By-laws permit the University of Chile to expel or refuse the admittance of academics, students, and officials who have been expelled from another institution of higher learning for having violated the law. The Committee has also called for the explicit repeal of section 35 of Legislative Decree No. 149 (By-laws of the University of Santiago de Chile). According to this provision, persons who participate in activities involving partisan politics aimed at disrupting the public order and have been sanctioned by the competent authority may not register in the University of Santiago de Chile, regardless of whether they have the requisite qualifications to study there. Moreover, those who participate in activities of the same nature as those indicated above will lose their status as students.

2. Throughout its reports, the Government has reiterated its position that the above-referenced decrees were implicitly repealed upon the enactment of the university regulations, Legislative Decrees Nos. 148 to 164 of 1982, which govern this matter. On this point, the Committee has had the opportunity to observe that, the texts in question, while tacitly repealed, have served as the predicate for the enactment of the Regulation of Ethical Rules for students of the University of Concepción (Decree No. 84655), adopted by virtue of the faculties conferred by, inter alia, Decree No. 139 of 1973, which forms part of the group of implicitly repealed decrees. This fact points out the need for an explicit repeal of the above-mentioned decrees, in order to avoid any uncertainty with regard to the applicability or enforceability of the challenged decrees. The Committee notes that in its last report the Government states once again that the decrees in question have been implicitly repealed. The Committee regrets that the Government has not

indicated any intention to repeal explicitly this legislation containing provisions that are incompatible with the non-discrimination policy enshrined in the Convention. Under these circumstances, the Committee cannot assure itself that, as required by the Convention, no one is denied access to or excluded from universities or other institutes of higher learning, whether as a student, academic or official, on the basis of the expression of political opinion.

3. The Committee notes the information provided by the Government with regard to the application of Acts Nos. 19234 and 19350, by virtue of which anticipatory benefits were accorded to persons exonerated for political reasons between 11 September 1973 and 10 March 1990.

Costa Rica (ratification: 1962)

1. The Committee took note in an earlier observation of the comments made by the Costa Rica Inter-Confederal Committee on 26 August 1997, concerning alleged violations of various Conventions ratified by Costa Rica, including Convention No. 111. These comments were communicated to the Government on 12 September 1997 for any reply it deemed appropriate to make. The Government sent its comments in a communication dated 9 June 1998.

2. In its comments, the Costa Rica Inter-Confederal Committee alleges that Costa Rican footballers cannot freely obtain employment for the following reasons:

- Every professional team must register its players' list with the Competitions Department of the Costa Rica Football Federation, a private association of football employers.
- No footballer can work officially for an employing sports association without being registered.
- A footballer wishing to change employers must be de-registered from the team in which he is currently employed.
- The de-registration may take place for one of three reasons: (1) it is the wish of the employer; (2) it is stipulated under the terms of an employment contract; or (3) it is required following the decision of an arbitration panel operating under the auspices of the Football Federation.

3. The trade union organization also alleges that the worker is required to pay a sum of money or sign a declaration renouncing his employment rights, under the threat of refusal to de-register him, which would prevent him from finding other employment. The Committee notes the fact that the Costa Rica Inter-Confederal Committee alleges that under these circumstances, "it is discriminatory to make the footballer's choice of employment dependent on the wishes of his current employer".

4. The Committee notes that the Government's information is consonant with the information provided by the trade union organization with regard to the restrictions on freedom of contract contained in the Rules of the Football Federation, but considers that the situation which has given rise to the complaint is not covered by Convention No. 111 because the restriction imposed on the freedom of footballers to seek other employment (de-registration subject to the wish of the employer) is not based on one of the grounds of discrimination prohibited by the Convention.

5. In its comments, the Costa Rica Inter-Confederal Committee also alleges that the Government tolerates employment announcements which, in a discriminatory manner, set unreasonable conditions or requirements relating to age or sex. The Committee notes

that it has not been provided with any specific examples of such announcements, and, in the absence of any information in this regard, finds itself unable to examine this question.

6. The Committee notes with interest the Bill inserting section 109*bis* in the Organic Law on the National Banking System, concerning measures to promote access to credit for women (*Official Gazette*, No. 20 of 29 January 1998). This section provides that commercial state banks must promote the development of women (by earmarking at least 30 per cent of their total credit capital for women), preferably women using home-produced raw material in activities which constitute their principal source of income. The banks must also advertise these measures to encourage more women to take advantage of this credit. The Committee notes the potential value of this measure for promoting equal treatment of men and women in employment and occupation, and asks the Government to keep it informed of any follow-up to this project and to provide a copy of the Law in question once it has been adopted.

7. The Committee also notes with interest the draft revision of *subparagraph (a) of section 81bis* and the addition of sections 161*bis* and 161*ter* of the Penal Code (Act No. 4573), published in the *Official Gazette* No. 134 of 13 July 1998. Under these provisions, sexual harassment and propositioning will be public offences liable to private prosecution and punishable with a prison sentence of between one and two years and two and three years, respectively. The Committee requests the Government to provide a copy of the Act in question once it has been adopted.

8. The Committee refers to its General Survey of 1988 on equality in employment and occupation (paragraphs 30 to 74) with regard to measures taken by countries to guarantee equality of opportunity and treatment in respect of certain types of discrimination, the grounds for which are not referred to in *Article 1, paragraph 1(a), of the Convention*, giving rise to the definition of new grounds for discrimination under *Article 1, paragraph 1(b)*, of the Convention. The Committee notes with interest the enactment of the General Act respecting HIV-AIDS published in *Official Gazette* No. 96 of 20 May 1998. Under section 4 of the General Act, all carriers of HIV-AIDS are entitled to freedom from interference in their activities at work, in their occupations and in education. Section 10 of the same Act prohibits any discrimination in employment against any worker with HIV-AIDS, and prohibits any employer, whether public or private, Costa Rican or foreign, from requiring reports or medical certificates from workers concerning their HIV-AIDS status as a condition for obtaining or retaining employment.

Croatia (ratification: 1991)

1. The Committee notes the comments communicated by the Union of Autonomous Trade Unions of Croatia (UATUC) on the application of the Convention, as well as the Government's reply.

2. According to the UATUC, discrimination in employment on the basis of sex, age, and ethnic origin is a frequent occurrence, especially with respect to vacancy announcements. It states that, even though employers have the obligation under the Employment Act (section 57) to inform the Croatian Employment Agency of every vacancy, in practice, employers often fail to do so and use sex or age as a condition for employment. The Committee notes from the Government's previous report that violation of this section is subject to a fine and requests the Government to provide information on the number of violations noted and fines imposed under this section. The UATUC further states that the workers most frequently dismissed were elderly persons, women, disabled workers, and workers of non-Croatian ethnic origin, the latter being particularly frequent

in the national administration. In its response, the Government states that it is not in a position to reply to these claims in the absence of more precise information, but it can confirm that there are no such cases in the state administration. The Committee hopes to be provided with information, and copies, of any administrative or judicial cases in which discriminatory hiring or dismissal practices have been alleged. It also hopes that the Government will take all necessary steps to ensure the full application of section 2 of the Labour Act of 1995 prohibiting discrimination in employment on various grounds including those covered by the Convention.

3. In regard to the UATUC statement that women are discriminated against on the labour market, the Committee notes the Government's indication that it is aware that there is hidden discrimination against women in the field of employment, and that, therefore, on 18 December 1997 the Government adopted the National Policy for the Promotion of Equality which provides for a series of measures to promote equality for women in different fields. The Committee notes that the National Policy is based on the principle that, although women have the same rights under the legislation, there is room for improvement with regard to the application of existing legislation in order to ensure full equality in practice. It notes in this respect that a gender analysis of legislation will be undertaken to determine its impact on women, including the extent to which it promotes equality and provides the necessary protection for working women. The Committee requests the Government to provide information on the findings of this examination, as well as any legislative changes considered or made, based on these findings. It also requests the Government to provide information on the implementation of other measures proposed in the National Policy in so far as they relate to the promotion of equality and prohibition of discrimination against women in employment.

4. With regard to the comments of the UATUC that there is no national employment policy in Croatia and that rights provided for in other programmes can not be implemented for lack of appropriate budget allocations, the Committee notes the Government's indication that the Chamber of Deputies of the Croatian Parliament adopted a National Employment Policy on 27 February 1998 and imposed on the Government an obligation to develop and implement a programme of promotional measures, which it adopted in March 1998. The Committee refers to its comments under the Employment Policy Convention, 1964 (No. 122).

Cyprus (ratification: 1968)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes that by a letter dated 11 April 1997, the Trades Union Congress (TUC) alleged that a named individual who is a member of a union affiliated with the TUC, had suffered discrimination in violation of the Convention on the ground of political opinion, over a period of more than 20 years, by the Cyprus Airways Group in which, according to the TUC, the Government has an 80.46 per cent share. The TUC states that Cyprus Airways and Eurocypria Airlines Ltd. resorted to a variety of measures to avoid extending the individual's fair access to employment as a pilot, despite documentary proof relating to his proficiency as a pilot and the findings of an independent investigation by well-qualified pilots who recommended that he be re-instated by Cyprus Airways. According to the TUC, the record in the Group shows that there is plentiful scope for discrimination in employment and a lack of redress for victims of discrimination which is inconsistent with the requirements of the Convention. Commenting on this communication, the Government supplies a detailed explanation of procedures for the issuing of permits to pilots and stresses that it acted within the framework of the existing legislation, which the Committee has

examined with care. The Government adds that the authorities acted in good faith bearing in mind the requirements of the post in question and practice in the industry, and that it did not violate in any way the provisions of Convention No. 111.

2. The Committee notes the information provided by the TUC and by the Government concerning this matter. As the Committee has not been presented with the necessary details on how political opinion may have swayed the decision not to employ the individual in question, it is not in a position to determine whether the Convention has been violated in this particular case.

The Committee hopes that the Government will make very effort to take the necessary action in the very near future.

The Committee is raising other matters in a request addressed directly to the Government.

Czech Republic (ratification: 1993)

1. *Discrimination on the basis of political opinion.* The Committee notes the information contained in the Government's report concerning the application of Act No. 451 of 1991 (the Screening Act, laying down certain prerequisites for holding a range of jobs and occupations mainly in public institutions but also in the private sector). It recalls that this Act was the subject of representations under article 24 of the ILO Constitution on two separate occasions. Thus, both in November 1991 (as concerned the Czech and Slovak Republic) and June 1994 (as concerned the Czech Republic), the Governing Body set up committees to examine the respective representations, the conclusions and recommendations of which were approved by the Governing Body at its 252nd Session (February 1992) and 264th Session (November 1995), respectively.

2. The Committee recalls that the Governing Body committee established in 1994 found that the Constitutional Court had not taken into consideration in its decision the concerns expressed by the earlier committee, including whether the exclusions in the Act were based on the inherent requirements of a particular job *(Article 1, paragraph 2, of the Convention)*, the measures which may be taken under *Article 4* (activities prejudicial to the security of the State), and to a certain extent the appeal procedures, although it was recognized that the 1992 decision had improved the Act in this regard. Therefore, the Governing Body committee of 1994 felt obliged to repeat the considerations of the earlier committee (see paragraphs 57 and 59 of document GB.264/16/2) and invited the Government to repeal or modify the provisions in the Screening Act that were incompatible with Convention No. 111.

3. In its report, the Government provides information on the continued application of the Screening Act in the state bodies, institutions and enterprises, in the Czech Academy of Sciences and universities, in the sphere of justice, and in licensed businesses. It stresses that the Act proceeds from the perceived need and assumption that during the transition from the totalitarian State to a democratic society, it is necessary to ensure full credibility of persons called on to perform leading functions. The Government further states that an important aspect of the implementation of the Act is that in the assessment of the individual's suitability to be appointed to positions in governmental bodies and state authorities or to carry out licensed businesses, the decisive criterion of the Act is not only the present political opinion of the individuals, but also the assessment of their credibility as regards past activities such as engaging in the suppression of human rights.

4. The Committee points out that the reports of the Governing Body committees do not address the question of whether the persons in question violated human rights, but rather state that exclusions imposed on persons should be proportional to the inherent

requirements of a particular job, indicating for each separate category of functions included in Act No. 451 particular considerations with regard to the scope of any possible exclusion. The Government reports that Act No. 451 is applied only to the highest management levels in state bodies and enterprises. The Committee draws the Government's attention to its concern that the level of a certain post within a public or private organization may not be determinative and that what is required is a careful and objective consideration of the inherent requirements of a job on a case-by-case-basis. The Committee must again request the Government to repeal or modify any legal provisions, or means of applying them, which are incompatible with the Convention, taking into account the considerations contained in paragraphs 57 and 59 of the report of the 1994 Governing Body Committee. It continues to express its regret over the extension of the Screening Act until 31 December 2000, but it notes from the Government's report that it does not envisage extending the Act beyond this date. Noting that new legislation is being developed concerning the status of employees in the state administration, the Committee requests the Government to keep it informed of developments in this respect. The Government is requested also to supply statistics in its next report on the application of Act No. 451.

5. *Discrimination on the basis of other grounds*. The Committee notes from the Government's report that an amendment to the Employment Act is under preparation with the aim of moving the prohibition of discrimination from the preamble to section 1 of the Act, thus making it a binding standard that can be enforced by labour inspectors, and for the violation of which penalties can be imposed. Noting that the amendment was expected to take effect as of July 1998, the Committee requests the Government to provide it with a copy of the amendment and to indicate measures taken to ensure its application. Similarly, the Committee notes that legislation is being developed to replace the 1965 Labour Code which, according to the Government, would respect the spirit of Convention No. 111 and contain an explicit prohibition of discrimination in employment and occupation. The Committee requests the Government to keep it informed on progress made in this regard and to supply a copy upon its adoption.

6. The Committee notes from the Government's report that certain measures have been implemented for the Romanies in an effort to reduce their high levels of unemployment and social and economic exclusion from the society, but that these measures have produced at best mixed results. In its report, the Government explains the disadvantaged position of the Romanies as being due, inter alia, to their negative approaches to traditional European values, work attitudes, low educational and skill levels, lack of motivation or interest in long-term training, and reliance on social benefits. Noting the Government's indication that it intends to continue its efforts to ensure the realization of its long-term goal of integration of the Romanies into society, the Committee points out that the elimination of distinctions in employment and education depends on a general context of equality of opportunity and treatment without which the full application of Convention No. 111 would be illusory. As has been stated in a report of a Commission of Inquiry, this general context will depend on the fulfilment of two conditions: respect for the rule of law and development of a climate of tolerance. The first condition will depend on the role reserved for law and the channels of appeal open to persons who are victims of discriminatory practices. The second condition depends not only on the enactment of legislation but also on the promotion of education, as referred to in *Article 3(b) of the Convention*. It should embrace the entire field of employment and education, but should not be limited to these fields alone. The aim of such an education programme is to promote the development of a climate of tolerance, without which coexistence

between minorities and the majority, or even among the various minorities themselves, can only be fraught with conflict (report of the Commission on Inquiry appointed under article 26 of the Constitution of the ILO to examine observance by Romania of ILO Convention No. 111, *Official Bulletin*, Supplement 3, Vol. LXXIV, 1991, Series B, paragraphs 604, 605 and 608). The Committee requests the Government to provide, in its next report, information on the measures taken to improve the status of Romanies in regard to access to training, education, employment and occupation, including all steps taken to raise public awareness of the issue of racism and intolerance in order to improve tolerance and understanding between the Romanies and others in the society.

7. With reference to its previous comments concerning amendment of Act No. 216 of 10 July 1993, the Committee notes that the Government's report is silent on this issue and must therefore repeat a part of its previous observation which read as follows:

> The Committee notes that the Government's first report also refers to Act No. 216 of 10 July 1993 which amended the 1990 Higher Education Act by transforming the employment contracts of teachers and researchers into fixed-term contracts expiring on 30 September 1994, and thus required the holding of competitions for all jobs of higher education teachers, scientific workers and managers of educational and scientific higher education establishments. This legislation was also examined in the above-mentioned representation, but the Governing Body committee considered that it did not have sufficient information to evaluate it in relation to the requirements of the Convention. The present Committee notes the Government's statement that the measure was aimed at opening chances for all teachers and citizens who had suffered discrimination on political grounds in the period prior to 1989 and at ensuring high integrity education for the new generations of students. It also notes that, at the date of the report (November 1995), 1,021 managers' jobs (5.1 per cent being filled by external candidates) and 6,236 other jobs in universities had been filled by competitions under the amendment. The Committee observes that, from the information available, Act No. 216 contains provisions linked to political opinion and it notes that the Government's report itself recognizes the internal criticism of the new recruitment procedure. The Committee thus refers the Government to the recommendations of the Governing Body committee set out above. Noting, however, that, according to the report, a change in the present system is envisaged in the draft of a new law on higher education, due to be discussed in Parliament in 1996, the Committee requests the Government to include, in its next report, information on the parliamentary discussions. In particular, it would like to receive information on whether the debates result in the removal of the discriminatory elements from Act No. 216 and ensure that new recruitments proceed irrespective of the political opinions of candidates.

The Committee is raising other points in a request addressed directly to the Government.

Ecuador (ratification: 1962)

The Committee notes the information provided by the Government in its report.

1. The Committee notes that the Constituent National Assembly adopted on 5 June 1998 the new Political Constitution of the Republic of Ecuador containing various provisions relating to the subject covered by the Convention. The Committee notes with interest article 23(3) under which "the State shall recognize and guarantee to individuals equality before the law: all persons shall be considered equal and shall enjoy the same rights, freedoms and opportunities, without discrimination on grounds of birth, age, sex, ethnic origin, colour, social origin, language, religion, political affiliation, financial situation, sexual orientation, state of health, disability or difference of any nature". The Committee refers to its General Survey of 1988 on equality in employment and occupation (paragraphs 30 to 74) as regards the measures taken by countries to guarantee equality of opportunity and treatment in respect of certain types of discrimination, the grounds for

which are not enumerated in *Article 1, paragraph 1(a), of the Convention*, which may give rise to a determination that other grounds for discrimination are covered under *Article 1, paragraph 1(b)*, of the Convention. In this respect, the Committee notes that the above-mentioned constitutional provision prohibits discrimination, in addition to the reasons set out in *Article 1, paragraph 1(a)*, on the grounds of sexual orientation, state of health and disability.

2. The Committee notes article 36(2) of the National Constitution which prohibits "any type of labour discrimination against women", and article 34, under which "the State shall guarantee equality of rights and opportunities for women and men in access to productive resources ..." and refers to the comments that it has been making since 1988 on section 17(b) of the regulations issued under the Cooperatives Act, by virtue of which married women require the authorization of their husbands to be members of housing, agricultural and family vegetable garden cooperatives. The Committee has also referred to section 12 of the Commercial Code, under which married women require the authorization of their husbands to enter into commerce, and sections 66, 80 and 105 of the above Code, which prohibit married and single women from entering the stock market, being stockbrokers or public auctioneers. With regard to the above provisions of the Commercial Code, the Government states in its latest report that since 1989 the Court of Constitutional Guarantees has suspended sections 12, 66, 80 and 105 of the Commercial Code with regard to the limitations placed on women (RS.TGC.RO 224:3 July 1989). The Government previously provided registers of stockbrokers which include women as operators. The Committee also notes the amendments to section 11 of the Cooperatives Act, but notes that section 17 of its regulations continues to require the authorization of the husband for married women who are not separated, or whose marriage settlements are not based on the separation of property rights, from being members of the above types of cooperatives.

The Committee takes due note of the above developments. Nevertheless, it emphasizes the importance of bringing the national legislation formally into conformity with the Convention by explicitly repealing or amending the provisions which are not in conformity with it, thereby ensuring that there is no uncertainty as to the legal texts which are in force. In this respect, the Committee recalls the commitment made by the Government to submit legal reforms to the National Congress to bring the national legislation into full compliance with the Convention and the provisions of the Constitution and it requests the Government to take the necessary measures for this purpose.

3. The Committee notes the information contained in the report, dated 1 October 1997, which was submitted by Ecuador to the Human Rights Committee in accordance with article 40 of the International Covenant on Civil and Political Rights for the period 1990-96 (doc. CCPR/C/84/Add.6). In paragraph 215 of the above report, the Government states that "despite the efforts being made to eradicate the remnants of racial discrimination, such discrimination still exists in practice, affecting the indigenous population and the Afro-Ecuadorian communities". In the same report, it is stated that the indigenous population accounts for between 25 and 40 per cent of the total number of inhabitants of Ecuador and that Afro-Ecuadorians account for between 5 and 10 per cent of the national population (paragraphs 289 and 290) and that "there are few indigenous Ecuadorians holding decision-making posts in the executive and judiciary or in the private sector" (paragraph 292). The Committee notes the Government's statement in the report that government policies for indigenous peoples are designed to take "all measures to prevent the exclusion of the indigenous peoples from the current economic system" and to promote "their integration into the market economy in a creative manner" (paragraph

295). The Committee requests the Government to provide information on the action that has been taken or is under way in the framework of the above policies and on any measure which has been taken or is envisaged to ensure equality of opportunity and treatment in employment and occupation for indigenous and Afro-Ecuadorian groups. The Committee notes that the Government has recently ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

4. With reference to paragraphs 178 to 184 of its General Survey of 1988 on equality in employment and occupation, the Committee wishes to reaffirm that a policy of equality of opportunity in training is a means of securing full participation of the entire population, without exception, in economic activity and therefore in employment and occupation; training is the key to promotion of equality of opportunity. In this respect, the Committee notes with interest that, in accordance with article 77 of the Constitution "the State shall guarantee equality of opportunity of access to higher education" and the creation in 1993 of the National Directorate for Bilingual Inter-Cultural Education, specializing in aboriginal cultures and languages, which was set up to provide bilingual teaching (Quechua and Spanish) in the indigenous communities of the highlands, with a view to meeting the educational needs of marginal groups (paragraph 287 of the above report). The Committee also notes with interest the provisions respecting the collective rights of indigenous peoples, Negroes and Afro-Ecuadorians contained in the Constitution of the Republic of Ecuador of 1998.

Guinea (ratification: 1960)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes that the Government's brief report does no more than repeat the information given for a number of years. It therefore trusts that the Government will provide with the next report more detailed information on the progress made in bringing its national legislation into conformity with the 1990 Constitution and the Convention and that it will send copies of the codes, decrees, orders, decisions and collective agreements which are being prepared or revised once they have been adopted.
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> 2. With regard to the public service in particular, the Committee notes that the Government repeats its previous statement that the public service regulations are still being harmonized with the new Constitution and the Convention. The Committee reiterates the hope that the Government will take into account its previous comments concerning amendment of section 20 of the Ordinance of 5 March 1987 on the general principles of the public service (which excludes discrimination only the basis of philosophical or religious views and of sex) and the inclusion in the new revised regulations of all the grounds of discrimination set out in *Article 1, paragraph 1(a), of the Convention*. In this respect, the Committee draws the Government's attention to paragraph 58 of its 1988 General Survey on equality in employment and occupation which states that where provisions are adopted in order to give effect to the principle contained in the Convention, they should include *all* the grounds of discrimination laid down in Article 1, paragraph 1(a), of the Convention.
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> 3. The Committee is addressing a request directly to the Government on other points.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

India (ratification: 1960)

Further to its previous observation, the Committee notes with interest the information provided by the Government, particularly the letter of 2 November 1997 from the Secretary of Labour directing the central ministries, state governments and chief managing directors of public sector undertakings to follow the guidelines and norms prohibiting sexual harassment of women in the workplace set forth in the Supreme Court's 13 August 1997 ruling in *Vishaka and Ors.* v. *the State of Rajasthan and Ors.* The Committee further notes that, on 13 February 1998, the Government amended the Central Civil Service (Conduct) Rules, 1964, to add Rule 3C, which expressly prohibits the sexual harassment of women at their workplace.

The Committee is raising other points in a request addressed directly to the Government.

Islamic Republic of Iran (ratification: 1964)

The Committee takes note of the Government's report and the attached statistics and information received during its session. The Committee also recalls the discussion of the Conference Committee on the Application of Standards in 1997.

1. *Discrimination on the basis of sex.* The Committee notes that women's employment continues to increase in all sectors of the economy (1991: 733,000 women employed in salaried posts and 415,000 in non-wage employment; 1996: 948,000 in salaried posts and 730,000 in non-wage employment), with notable increases in the private sector wage and salary employment category (from 119,000 in 1991 to 250,000 in 1996), the non-wage employers' category (from 10,000 in 1991 to 16,000 in 1996) and the non-wage family worker category (from 148,000 in 1991 to 367,000 in 1996). The Government indicates in its report that this increase is due largely to the implementation of a dual policy of enhancing equal opportunity for women, with a focus on efforts made to increase female participation rates in education, and promoting the role of women in society. In this respect, the Committee notes from the Government's report that the percentage of women enrolled at cycle (pre-high school) level education in 1996 was 25.9 per cent as compared to 18.9 per cent in 1986, in high school 19.3 per cent in 1996 as compared to 9.9 per cent in 1986, and in higher education 4.3 per cent in 1996 as compared to 1.2 per cent in 1986. It also notes the Government's indication that, in some subject areas in higher education, the number of female graduates will outnumber male graduates in the future (for example, in 1986 about 49 per cent of graduates in medical sciences were female, while the ratio increased to 53 per cent in 1996 and is expected to increase to 60 per cent in the future). It also notes the additional information provided by the Government concerning the results of the 1998 National University Entrance Examination which indicate that the number of female entrants to higher education is larger in 1998 than the number of males (66,756 males compared to 72,681 females, with females outnumbering males in the experimental and human sciences and arts, and males outnumbering females in technical sciences and mathematics). The Committee notes that some progress has been made in increasing female participation both in employment and education. However, it notes that female participation remains generally very low in higher education. It would be grateful if the Government would continue to provide information on the policies, programmes and other measures taken to further progress in women's access to education, employment and occupational opportunities. The Committee also requests the Government to continue to provide information on the number of women appointed to the judiciary.

2. The Committee has previously referred to the obligatory dress code for female public servants, and sanctions, including the possibility of physical punishment, for violation of the 1987 Act on Administrative Infringements under sections 10 and 13. It notes the Government's reply that the dress code for civil servants is not discriminatory since there is a dress code for men as well as for women. The Government also indicates

that no law or regulation, including the Act on Administrative Infringements, contains provisions that prescribe physical punishment for non-observance of proper dress. Rather, according to the Government, violations of the dress code are addressed through section 9 on administrative sanctions of the Act on Administrative Infringements and that the usual form is through registered or non-registered notification to the employee or other administrative sanction. Noting that other administrative action taken pursuant to section 9 could include termination of employment, the Committee requests the Government to provide information on the practical application of sanctions imposed for violation of the dress code under section 9. The Committee would also be grateful if the Government would provide a complete copy of the Act on Administrative Infringements and the practical application of sections 9, 10 and 13.

3. The Committee notes that the Government's report does not contain any information on the application of section 1117 of the Civil Code (under which a husband may bring a court action to object to his wife taking up a profession or job contrary to the interest of the family or to his wife's or own prestige), and the 1975 Act on the Protection of the Family which extends to wives as well as husbands the right to object to the employment of the spouse. The Committee therefore again requests the Government to inform it of developments regarding the revision of section 1117, and to supply information on any cases in which either spouse uses this particular provision to limit the job opportunities of the other spouse.

4. *Discrimination on the basis of religion.* The Committee recalls that it has earlier concluded that, on the basis of the information supplied by the Government, it appeared that, for the recognized religious minorities (Christians, Jews, Zoroastrians), efforts had been made to improve the employment situation. The Committee notes that, in its present report, the Government states that the employment situation of members of the religious minorities is better than the national average, indicating that while the national unemployment rate in 1996 was 9.09 per cent, the unemployment rate for Christians was 7.54 per cent, 9.08 per cent for Jews and 8.60 per cent for Zoroastrians. These figures appear to confirm that efforts are being made to allow for the improvement of the employment situation of members of the recognized religious minorities. The Committee requests the Government to continue to provide information in this regard, especially information on the representation of members of the religious minorities in the different sectors of activity and on the measures taken to prohibit discrimination on the basis of religion in employment and occupation.

5. The Committee recalls however, that in his Report on the situation of human rights in the Islamic Republic of Iran (United Nations Document E/CN.4/1998/59 of 28 January 1998), the Special Representative of the United Nations Commission on Human Rights states that reports of cases in which the human rights of Baha'is have been breached and of situations of discrimination and even of persecution, including, inter alia, refusal of entry to universities and dismissal from employment, continued to be received. It also notes that the Commission on Human Rights expressed its concern in its resolution 1998/80 of 22 April 1998 at continuing grave violations of the human rights of the Baha'is, as well as discrimination against members of other religious minorities, including Christians, despite constitutional guarantees.

6. With reference to its previous comments and the discussions in the 1997 Conference Committee, the Committee notes with interest the 50-page annex to the Government's report containing examples of job advertisements, none of which appear to contain religious requirements. It notes the Government's statement that, over time, job offers, vacancy announcements and student placement announcements have tended to

become simpler in format and more uniform, indicating necessary qualifications by incorporating criteria on relevant education, level of education or past experience that cannot be interpreted as discriminatory. With reference to the criteria contained in the notices, the Committee refers the Government to paragraph 26 of its Special Survey of 1996 on equality in employment and occupation which deals with indirect discrimination. In this respect, it notes that the application of the same criteria to everyone, as a certain job requirement, could result in a disproportionate impact on some persons, when certain categories of persons do not have equal access to education necessary to obtain the job requirement in question, on grounds of, such as, religion, which in itself would constitute a form of direct discrimination. The Committee thus requests the Government to continue to supply information concerning job offers, including information on any judicial findings regarding discrimination on religious grounds in relation to access to employment.

7. The Committee recalls that workers have three options when seeking representation: they can establish trade unions, elect workers' representatives or establish Islamic Labour Councils. It also recalls that, according to the 1996 statistics in a previous Government report, this free choice had led to the establishment of 112 workers' organizations, 1,277 Islamic Labour Councils, and the appointment of 537 workers' representatives. Noting the Government's previous comment that members of the recognized religious minorities could belong to Islamic Labour Councils and its indication that groups not recognized as religious minorities in the Constitution enjoy all the constitutional rights guaranteed to other citizens, the Committee requests the Government to continue to provide information on the number of different workers' representation mechanisms established as well as the number of Baha'i participating in these different mechanisms.

8. The Committee also notes the Government's renewed statement that, although Baha'is enjoy equal legal protection against discrimination, the declared intentions of the group, and their specific past and present activities, have made it difficult to provide unlimited access to employment in public institutions. It notes the Government's statement that Bahaism is not a religion and is not functioning as a religion, and that this question should not be dealt with under the rubric of religion. The Government reasserts that the officially recognized religions in the country are Islam, Christianity, Judaism and Zoroastrianism. It states further that the rights of citizens, including the right to employment, are universal and are for all citizens, and that not being a member of a recognized religion does not deprive any individual from enjoying his or her rights as a citizen.

9. With reference to *Article 4 of the Convention*, the Committee recalls its 1989 observation wherein it considered that in the Islamic Republic of Iran the exclusion of the Baha'i from employment in the public sector was based on adoption by the Baha'i of, and holding to, a faith which is not recognized under articles 12 and 13 of the Constitution. The Committee recalls its General Survey of 1988 on equality in employment and occupation where it noted that in some countries, the constitutional provisions authorize the practice of a number of religions, which are referred to by name, which could be interpreted as a prohibition on believing or practising a religion, the exercise of which is not guaranteed by the Constitution, or as a prohibition of atheism. It notes the Government's position that the Baha'i is not a religion and is not functioning as a religion. However, it notes also that Baha'i is generally considered to be a religion by those persons professing it. Further, outside the country it has been qualified as such in examinations by the United Nations and other international organizations, and that the Committee has no basis for concluding otherwise. Noting that the Government's report does not contain

information concerning the general employment situation of the Baha'i nor details concerning their employment in public service posts where particular religious beliefs are not inherent requirements of the job to be done, the Committee, with reference to paragraph 41 of its Special Survey of 1996 on employment and occupation, again requests the Government to provide such information.

10. The Committee notes the Government's indication that it has taken note of the proposal to invite a direct contacts mission. The Government states that it should be noted that it has been cooperating with the supervisory bodies of the ILO and expresses its determination to continue to do so. The Committee also notes the Government's indication that it would welcome further ILO technical assistance, as well as ILO participation in joint activities that would lead to further improved application of the Convention. The Committee welcomes the fact that its dialogue with the Government has served to clarify a number of outstanding issues, and repeats its hope that the Government will consider favourably accepting a direct contacts mission so as to make available complete information on the situation of religious minorities and other identifiable groups in the country. It hopes that the Government will be in a position to respond positively to this suggestion, thus further reflecting the willingness it has shown in recent years to engage in a dialogue with the Committee.

Morocco (ratification: 1963)

The Committee notes with interest from the information provided in the Government's report the repeal, by Act No. 25-95 promulgated by the Dahir of 11 August 1995, of section 726 of the Code of Obligations and Contracts which stipulated that a married woman could not enter into an employment contract without the authorization of her husband, who had the right to cancel any such contract concluded without his consent.

A request regarding other points is being addressed directly to the Government.

Niger (ratification: 1962)

With reference to its previous comments, the Committee notes with satisfaction the adoption of Ordinance No. 96-039 of 29 June 1996 issuing the Labour Code, section 5 of which prohibits any discrimination in employment based on the criteria set out in the Convention: "... no employer may take into consideration the sex, age, national extraction, race, religion, colour, political or religious opinion, social origin, disability, membership or not of a trade union, or trade union activities of workers in reaching decisions concerning recruitment, the performance and distribution of work, vocational training, career advancement and promotion, remuneration, entitlement to social benefits, discipline or the termination of the employment contract". The Committee is also addressing questions directly to the Government on the reservations set out in section 5 concerning provisions protecting women and children and provisions on the situation of foreigners.

The Committee is addressing a request directly to the Government on other points.

Philippines (ratification: 1960)

1. The Committee notes with interest the initiatives of the Government to integrate gender concerns in the enforcement of labour standards, by incorporating violations of Act No. 6725 (an Act strengthening prohibition on discrimination against women of 12 May 1989) as part of the items on inspection lists, as well as by prescribing women workers as one of the inspection priorities in 1997 under Administrative Order No. 47, series of

1997, issued by the Department of Labor and Employment (DOLE). The Committee requests the Government to provide information on the findings of the labour inspectorate in this regard.

2. The Committee notes with interest the information provided on the implementation of the project to eliminate sexual harassment, including the development of the model company policy and procedures, training modules and the numerous training activities, carried out on sexual harassment by the Bureau of Women and Young Workers of the DOLE. It asks the Government to continue to provide information on the activities of the project and the results achieved. It requests, in particular, information on the findings of the Bureau of Working Conditions (BWC), through the Labor Inspectorate Program, with regard to the number of companies that, so far, have developed Implementing Rules and Regulations (IRR) under Act No. 7877 (Anti-Sexual Harassment Act, 1995) and their functioning. Noting the attachment to the Government's report entitled "Oversight review of laws on women: Issues and Recommendations", which highlights various issues regarding the implementation of Act No. 7877, the Committee requests the Government to indicate measures taken or envisaged to implement the recommendations spelled out in the report, and to continue to provide information on the number and nature of complaints filed, and decisions rendered, under this Act.

The Committee is raising other points in a request addressed directly to the Government.

Rwanda (ratification: 1981)

1. The Committee is aware of the Government's efforts towards the economic and social reconstruction of the country, including the reintegration of the returnees. The Committee understands that the Government announced that returnees who wanted to seek employment would first have to pass through a one-month programme of re-education, and that returnees already employed had been told to leave their jobs until they had undergone this process. The Committee would be grateful if the Government would provide information on the re-education process, including the numbers of persons who have undergone the re-education, and the measures taken to ensure that it does not result in discrimination in employment and occupation on the basis of any of the grounds set out in the Convention.

2. With respect to the issuance, by the communal authorities, of a certificate of good conduct, lifestyle and morals and proof of loyalty to the authorities and national institutions required by jobseekers wishing to enter public service (in accordance with section 5 of the Legislative Decree of March 1974 issuing General Regulations for State Employees and section 6 of the Presidential Order of 20 December 1976 issuing Regulations for Personnel in Public Enterprises), the Committee notes that the new draft of the public service regulations which are intended to resolve the question of the criteria on which communal authorities may refuse or grant such certificates is still being examined. It therefore requests the Government to keep it informed of progress on the said draft text and to supply a copy of the definitive text once it has been adopted.

3. The Committee notes, on the other hand, that the Government's report makes no mention of the fact that the labour administration may request a certificate of good conduct, lifestyle and morals from jobseekers who are "justifiably suspected of, or engaged in, activities prejudicial to the security of the State", even though there are no legislative provisions or regulations which define the criteria on which communal authorities may refuse or issue such certificates. Therefore, the Committee reiterates that it would like the Government to indicate in its next report the measures taken to rectify

this omission which could be open to abuse and, also, to ensure that a jobseeker may only be refused employment if justifiably suspected of, or engaged in, activities prejudicial to the security of the State within the limits of *Articles 1 and 2 of the Convention* and subject to the right to appeal as laid down in *Article 4*. In this respect, please refer to paragraphs 104 and 134-138 of the Committee's 1988 General Survey on equality in employment and profession.

The Committee is addressing a request directly to the Government on other points.

Sierra Leone (ratification: 1966)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. In its previous comment, the Committee had noted with interest that the new Constitution (Act No. 6 of 1991) no longer made provision for a one-party system and did not reserve certain high-level public offices for members of the recognized party, as had the Constitution of 1978. (The previous Constitution of 1961, which had included a general provision for the protection of fundamental rights and freedoms on most of the grounds of the Convention was suspended in 1968.) The Committee had also noted with interest that article 8(3) of the new Constitution directs state policy towards ensuring that every citizen, without distinction on any grounds whatsoever, should have the opportunity for securing adequate means of livelihood and adequate opportunities to secure suitable employment and that article 15 lays down certain fundamental human rights and freedoms for all individuals irrespective of race, tribe, place of origin, political opinion, colour, creed or sex. As there had been no progress towards enunciating a national policy to promote equality of opportunity and treatment in employment and occupation, as required by *Article 2 of the Convention*, the Committee had hoped that, in the light of the new Constitutional provisions and, especially, those of article 8(3), the Government would proceed to formulate a national policy, in consultation with the tripartite Joint Consultative Committee.
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> 2. In its reports, the Government states that, despite the suspension of the 1991 Constitution, the Government has a broad-based policy which ensures jobs for all who apply, regardless of sex, religion, ethnicity and political opinion. The Government also states that the Joint Consultative Committee has yet to make its final recommendations on a national policy. The Committee notes this information with concern. It recalls that in the 30 years since the Convention's ratification, the Government has reported consistently that no legislation or administrative regulation or other measures exist to give effect to the provisions of the Convention and that no national policy has been declared, pursuant to *Article 2*. With the suspension of the 1991 Constitution, there is no national legal instrument or formally declared policy in the country which provides any protection against discrimination. The Committee hopes that the Government will respect its obligations under the Convention. In particular, it trusts that a national policy on discrimination will be formulated, as required by the Convention, and that full details will be provided in the Government's next report, on the measures being taken and contemplated to apply the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Spain (ratification: 1967)

1. The Committee notes the detailed information provided by the Government in its last report in respect of the application of the Convention, which was received in 1997 and not examined at the time due to the examination of the representation, submitted by the General Confederation of Labour of Argentina (CGT), and the information provided by the General Workers' Trade Union (UGT) of 22 January 1998. The Committee also

notes the report of the Governing Body Committee established to examine the representation by the CGT submitted in 1997 under article 24 of the ILO Constitution concerning the question of the practice of dentistry in Spain by Argentinean dentists with Argentinean diplomas (document GB.272/7/3). The Governing Body Committee concluded that there had been no violation in law and in practice of Convention No. 111 in this respect.

2. In its previous comment, the Committee had noted the adoption of new legislation promoting non-discrimination on the grounds of gender and had requested the Government to provide information on the application in practice of the new legislation. The Committee notes the detailed information provided by the Government concerning the importance it places on the active policy to promote equality between men and women in social matters. The Committee also notes with interest that under sections 53.4 and 55 of the new text of the Workers' Statute, adopted by Royal Legislative Decree No. 1/1995, governing termination of employment contracts for objective or disciplinary reasons, discrimination constitutes a basis for nullifying the dismissal. It also notes the recent insertion of section 184 into Organic Act No. 10/1995 respecting the Penal Code of 23 November which lays down that sexual harassment is an offence (thus classifying sexual harassment among the list of offences against workers' rights, under section 314 of the Penal Code, which includes acts of serious discrimination against a person and failure to re-establish equality upon request or administrative sanction).

3. The Committee also notes with interest the various decisions handed down by the Constitutional Court following appeals *(amparo)* for protection, in respect of the alleged violation of the principle of equality in matters of remuneration and non-discrimination on the ground of sex, as well as the sentences issued by the Supreme Court and other courts which nullify the dismissal of workers who have taken maternity leave and which pronounce on inequality of remuneration and sexual harassment. Finally, the Committee notes the Government's statement with regard to the activities of the Labour and Social Security Inspectorate in matters of discrimination in employment and occupation during 1995 and 1996, and the list of proceedings and violations registered concerning discriminatory practices against female, disabled and other categories of workers.

4. The Committee also notes the comments made by the UGT, to the effect that discriminatory practices in employment and occupation for reasons of sex will only be completely eradicated when the Government adopts legal and other measures designed to accelerate the socio-cultural exchange in the division of family responsibilities. The UGT further pointed to the need, above all, for specific inspection measures to prevent discrimination in matters of remuneration (working women's wages are 20 to 30 per cent less than their male counterparts) and access to employment, promotion and advancement, areas in which women are seriously discriminated against. The Government has not submitted comments on these points. The Committee hopes that the Government will communicate detailed information in respect of the measures taken in this regard.

Sudan (ratification: 1970)

1. Further to its previous observations, the Committee notes with interest the repeal of Constitutional Decree No. 2, section 6(c)(6) of which declared a state of emergency, dissolved political parties and trade unions and allowed measures to terminate the service of any public employee and every contract with a public office. The repeal was effective 30 June 1998, and a new Constitution of the Republic of Sudan has been signed by the President. The Committee notes in particular that article 21 of the Constitution prohibits

discrimination on the grounds of race, sex and religious creed. The Government is requested to indicate the manner in which the application in practice of the provisions of the Constitution is ensured, in employment and occupation, with regard in particular to the prohibition of discrimination on grounds of race, sex and religious creed. The Committee notes the omission of political opinion, national extraction, colour and social origin from the prohibited grounds of discrimination in article 21 of the new Constitution, and requests the Government to supply information, which it can examine at its next session, on the specific measures taken or contemplated to give legal expression to protection against discrimination on these grounds. In this regard, the Committee recalls its long-held view that where provisions are adopted in order to give effect to the principle contained in the Convention, they should include all the grounds of discrimination laid down in *Article 1, paragraph 1(a)*.

2. The Committee notes the adoption of the new Labour Code of 1997 which incorporates the provisions of the 1974 Labour Force Act, the 1976 Industrial Relations Act, the Industrial Safety Act and the 1981 Individual Relations Act. The Committee notes that the new Labour Code does not contain any provisions pertaining to equal opportunity and treatment in access to vocational training, and to employment, and for terms and conditions of employment. In this regard, the Committee must refer to the intention stated by the Government in its previous reports, that, in the framework of the general revision of the labour legislation, it would include a provision in the legislation giving express effect to the principles of the Convention. The Committee requests the Government to indicate the measures taken or envisaged to promote equal opportunity and treatment in employment and occupation for all categories of workers and to protect them against discrimination in accordance with *Article 1(a) of the Convention*.

3. The Committee takes note of the 1994 Public Service Act. It notes that section 18 of the Act states that "the selection process for public service posts is open to everyone and is based on competence; that it is determined by examinations or interviews or both, depending on the work requirements and the various specializations". Noting also the Government's statement in its previous report that decisions of the selection committees are made on the basis of the principle of equal opportunity and without discrimination on the grounds of sex, religion or race, the Committee asks the Government again for information on how respect for this principle in decisions of the selection committees is monitored, and on the procedure available for appeal of such a decision on grounds of discrimination.

4. As the Government's report contains no details on the racial and religious composition of the courts, tribunals and police forces of the country and on measures taken or contemplated by the Government to facilitate access of persons of non-Arab extraction to posts in the judicial system, the Committee is obliged to repeat its request for such information.

5. The Committee takes note of the statistics supplied concerning the number of participants and types of courses offered at the regional vocational training centre in Khartoum, Friendship Omdurman and El Obeid. While noting that in the El Obeid vocational training and service centre, 30.6 per cent of the trainees were women (of which 54.1 per cent were enrolled in short-term business training courses), it notes that women constituted less than 6 per cent of the students receiving vocational training in Khartoum and Friendship Omdurman. Furthermore, statistics on the vocational training courses in Khartoum in 1997 show that women and men are mainly clustered in traditionally female and male subjects and occupations. The Committee requests the Government to provide, in its next report, information on the measures taken or contemplated to facilitate women's

access to a greater variety of skills training and jobs and to enhance women's participation in training institutions. Such measures could include, for example, adult literacy training programmes and out-of-school education for women, flexible training schedules, child-care facilities at training sites or general awareness-raising campaigns to promote women's and girls' education and training. The Committee also requests the Government to continue to provide statistical and other information, showing the participation of men and women in vocational training programmes, as well as the religious, ethnic and racial composition of the trainees.

6. The Committee is raising other points in a request addressed directly to the Government.

Turkey (ratification: 1967)

1. The Committee notes the Government's report and the comments of the Confederation of Turkish Employers' Associations (TISK). It also notes the Government's previous report and the previous comments of the Confederation of Turkish Trade Unions (TÜRK-IŞ) and of TISK which it had been unable to examine at its last session. The Committee notes that, according to TISK, the practical application of the Convention poses no problem from the point of view of the private sector. The comments of TÜRK-IŞ are dealt with under point 3.

2. *Position of public servants dismissed or transferred during the period of martial law 1980-87.* With regard to action taken to give effect to the 1989 Council of State ruling concerning reinstatement of victims of discrimination based on political grounds under Martial Law Act No. 1402, the Committee recalls that it has been following the reinstatement process of thousands of workers for a number of years. In its previous observation, the Committee had requested information on the reasons why 753 of the transferred civil servants and 202 of the transferred public employees who had applied for reinstatement had not been returned to their posts. The Government has replied that those who were not reinstated either did not apply or no longer meet the requirements for the job. In this regard, the Committee requests the Government to indicate whether all transferred workers were informed of their right to be reinstated, and to continue to provide detailed information on the number of applications processed and their outcome concerning reinstatement and compensation. With reference to its previous observation concerning reinstatement of military and civilian members of the armed forces and members of the security forces under Act No. 4045, the Committee again requests the Government to indicate whether any applications of the above-mentioned personnel for office or employment in public institutions and bodies other than their own institutions have been evaluated by the State Personnel Department as required in such cases under provisional section 5, and the result of such evaluation.

3. *Amendments to Martial Law Act No. 1402.* The Committee recalls that, in previous observations, it had noted that Act No. 4045 does not amend section 3(d) of Martial Law Act No. 1402, leaving unaltered the broad powers vested in martial law commanders when martial law is applicable, and had expressed the hope that appropriate changes would be made to ensure that the measures intended to safeguard the security of the State are sufficiently defined and delimited so as not to lead to discrimination on the basis of, inter alia, political opinion. TÜRK-IŞ states in its comments that Martial Law Act. No. 1402 continues to authorize martial law commanders to dismiss workers and public servants or send them to other areas without a court ruling and without observing the right to appeal provided for in *Article 4 of the Convention*. Noting the Government's statement that martial law as defined in article 122 of the Turkish Constitution is an

exceptional and temporary measure, that the exercise of martial law was lifted as of 19 July 1987, and that some limitations had been placed on martial law commanders, the Committee is nevertheless of the opinion that commanders continue to be vested with broad powers which could potentially lead to discrimination in employment of public employees on the basis of political opinion in contradiction to the Convention. It therefore calls upon the Government, once again, to take immediate action to repeal or to amend the relevant law accordingly. Noting the Government's assurances given in its reply that the right of appeal for the application of section 3(d) of Act No. 1402 exists pursuant to article 125 of the Constitution and is further ensured by the Act Concerning the Procedure of Administrative Trials, No. 2577, the Committee once again requests the Government to provide statistical information on the number of appeals launched under this section and their outcomes.

4. *Measures taken under the 1990 Security Investigation Regulation*. The Committee notes that the "provisional" sections of Act No. 4045 were only applicable for a six-month period following its entry into force on 2 November 1994, but that, according to the Government, the implementing regulations, which, according to provisional section 7 of the Act, were to be adopted within six months of the entry into force of the Act, have not yet been adopted, and that therefore those provisions of the 1990 Regulation that do not contradict the provisions of Act No. 4045 are still applicable. The Committee would appreciate receiving information on the status of the implementing regulations and of the consequent repeal of the 1990 Security Investigation Regulation, as well as details on the use of the Regulation until its repeal.

5. *1991 Fight against Terrorism Act*. The Committee notes with interest the 27 October 1995 amendment of section 8 of this Act (which contains a very broad definition of propaganda, carrying a sentence of imprisonment) introducing the element of intent or aim, thus restricting broad interpretations and the possibility of discrimination. It also notes, however, that section 1 of the Act (which introduced a very broad definition of terrorism, carrying a sentence of imprisonment) has not been amended. In this connection, and with reference to its previous observation, the Committee recalls that the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1995/L.10/Add.7 of August 1995) strongly condemned, in Turkey, the imprisonment of intellectuals, scholars, writers, journalists and parliamentarians on the grounds of their opinions. Considering that section 1 of the Fight against Terrorism Act had been cited by the Committee in its previous observations as being too broad in scope and as permitting possible discrimination on grounds prohibited by the Convention, the Committee draws the Government's attention to its 1996 Special Survey on equality in employment and occupation in which it stated that, in protecting individuals against discrimination in employment and occupation on the basis of political opinion, the Convention implies that this protection shall be afforded to them in respect of activities expressing or demonstrating opposition to the established political principles, or simply a different opinion. It also stated that the protection of political opinion only applies to opinions which are either expressed or demonstrated, and does not apply if violent methods are used to express these opinions. The Committee requests the Government to consider further amendment of the Act to ensure that persons are not deprived of employment through imprisonment under this Act as a result of discrimination on any of the grounds set out in *Article 1, paragraph 1(a)*, of the Convention.

6. The Committee notes with interest that the Constitutional Court repealed section 159 of the Civil Code, which required a husband's consent in order for his wife to be able to take up employment, on the grounds of inconsistency with the Constitution.

The Committee is addressing a request directly to the Government on other points.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Antigua and Barbuda, Azerbaijan, Barbados, Bolivia, Cameroon, Chile, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominica, Ecuador, Gabon, Ghana, Guinea, Guinea-Bissau, Haiti, Honduras, India, Israel, Jamaica, Kuwait, Liberia, Madagascar, Malawi, Mali, Malta, Morocco, Niger, Panama, Philippines, Qatar, Rwanda, Saint Lucia, Sao Tome and Principe, Senegal, Sierra Leone, Somalia, Spain, Sudan, Sweden, Trinidad and Tobago, Turkey, Venezuela, Yemen.*

Convention No. 112: Minimum Age (Fishermen), 1959

Liberia (ratification: 1960)

The Committee notes with regret that once again the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 2, paragraph 1, of the Convention.* Further to its previous comments regarding the absence of measures imposing minimum age of 15 years for employment in fishing vessels, the Committee notes the Government's statement in its most recent report that it now considers that Liberian Maritime Law and its sections 51(1) and 326(1) apply to fishing vessels, contrary to the position it had expressed since 1973 and the promises it had made to take measures to correct the situation. The Committee would be grateful if the Government would provide indications on the measures taken to apply the application of the provisions of the Maritime Law to fishing vessels.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Guatemala, Suriname.*

Convention No. 113: Medical Examination (Fishermen), 1959

Liberia (ratification: 1960)

The Committee notes with regret that once again the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Articles 2, 3, 4 and 5 of the Convention.* The Committee notes the Government's reply to the comments it had been making for many years on the need for legislation to give effect to Article 2 (requirement of a physical fitness certificate for employment on a fishing vessel), Article 3 (nature of the medical examination), Article 4 (period of validity of certificates) and Article 5 (possibility of a further medical examination). The Government indicates that it is the Liberian Requirements for Merchant Marine Personnel (RLM-118) which gives effect to the Convention. It further states that Liberian Maritime Regulation 10.325(2) gives effect to the other provisions of the Convention. The Committee refers to its comments under Convention No. 112 regarding the applicability of the Liberian Maritime Laws and Regulations to fishing vessels. It hopes the Government will also provide full explanations regarding the applicability of the Liberian Maritime Laws and Regulations to the medical examination of fishermen. The Committee would also be grateful if the Government would indicate whether consultations with the fishing-boat owners' and fishermen's organizations

> concerned, if they exist, had taken place prior to the adoption of the applicable laws and regulations on the nature of the medical examination and the particulars to be included in the medical certificate as required by Article 3, paragraph 1. In addition the Committee would be grateful if the Government would provide particulars on how due regard is had to the age of the person to be examined and the nature of the duties to be performed, in prescribing the nature of the examination as required by Article 3, paragraph 2.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Croatia, Guinea, Russian Federation*.

Convention No. 114: Fishermen's Articles of Agreement, 1959

Liberia (ratification: 1960)

The Committee notes with regret that once again the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee refers to its previous comments and asks the Government to provide full information on each provision of the Convention and each question in the report form approved by the Governing Body.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Panama (ratification: 1970)

The Committee notes the adoption of Legislative Decree No. 8 of 26 February 1998 issuing the Regulations respecting maritime work at sea and on inland waterways, and of Legislative Decree No. 7 of 7 February 1998 concerning the creation of the Panama Maritime Authority, the unification of the various maritime responsibilities of the public authorities and the adoption of other provisions.

The Committee notes, however, that the Government has not provided a report on the application of the Convention. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information provided by the Government in its report. It notes that the model articles of agreement for fishermen have still not been adopted. The Committee hopes that the Government's next report will indicate that the above-mentioned model articles of agreement have been adopted and that they will ensure the application of *Article 6, paragraphs 3(a), (d), (e), (f), (g) and (i) of the Convention* (particulars to be recorded in the articles of agreement). Furthermore, the Committee asks the Government to indicate the measures taken or envisaged to ensure the application of *Article 3, paragraph 4* (provisions of the national law to ensure that the fisherman has understood the agreement).
>
> *Point V of the report form.* The Committee notes the text of the collective agreement and the statistics supplied with the Government's report. Please provide information on the number and nature of infringements recorded relating to the application of the Convention.

* * *

In addition, a request regarding certain points is being addressed directly to *Tunisia*.

Convention No. 115: Radiation Protection, 1960

Requests regarding certain points are being addressed directly to the following States: *Djibouti, Latvia.*

Convention No. 117: Social Policy (Basic Aims and Standards), 1962

Brazil (ratification: 1969)

The Committee notes the observations made by the National Union of Labour Inspectors (Sindicato Nacional dos Agentes de Inspeçao do Trabalho-SNAIT) alleging non-observance of *Articles 4, 10, 11 and 12 of the Convention* with regard to agricultural workers. The Committee recalls that the SNAIT indicated in its observations that, taking into account the structure of land ownership, an organization of agricultural workers called the *Movimento dos Trabalhadores Sem-Terra* (Landless Workers' Movement) had occupied lands owned by the State in "Eldorado dos Carajás", in the State of Pará, which had granted possession of them to certain individuals. At the request of these individuals, the military police intervened, resulting in the death of tens of workers and over 40 injured. In the same comments, the trade union recalls the deplorable living and working conditions of agricultural workers in the state of Pará.

In its reply, the Government states that the State of Brazil publicly condemned the events in Eldorado dos Carajás and that the Federal Government appointed the highest-level experts to support the investigations carried out against the military police. The Government states that, based on these investigations, proceedings were commenced against 87 members of the fourth battalion of the military police of Marabá/PA and 69 members of the tenth independent company of the military police of Parauapebas/PA. It adds that it is the responsibility of the military judicial authorities of the state to reach a decision concerning the events which occurred. The Government also states that, taking into account these events, the Extraordinary Ministry of Agrarian Reform was restored at the federal level with a mandate to take all the necessary measures on an urgent basis for the implementation of a national agrarian reform policy. The Government also reports that the Agrarian Reform and Settlement Institute (INCRA) has adopted a series of measures for the settlement of the families of agricultural workers. Furthermore, various draft texts have been transmitted to the Congress respecting the procedures for the expropriation and distribution of lands with a view to adopting measures to protect the agricultural workers concerned against arbitrary action by the owners of farm land and to speed up the process of the expropriation of unproductive lands. Finally, expressing its concern at the situation in rural areas, the Government notes the existence of a National Forum against Violence in Rural Areas in which, in addition to representatives of public and private institutions, the organization "Sem-Terra" is also represented.

In its reports on the application of this Convention, the Government also provides information on the various activities undertaken to give effect to *Article 4* of the Convention. In this respect, the Government recognizes the unjust concentration of land in Brazil, and for that reason it has given political priority to land-related questions. In particular, the Government recalls the existence of a number of programmes to improve the economic and social conditions of rural populations in general terms and of agricultural workers in particular. It refers, among these programmes, to the Employment and Income Creation Programme (PROGER) and the Programme for the Extension of

Employment and Improvement of the Life of Workers (PROEMPREGO). It also notes that the country continues to be dependent to a large extent on agricultural activity, even though the majority of the Brazilian population is in urban areas, and it provides information on the various measures that are being adopted for the rural population. In this respect, the Government mentions for example the National Programme for the Strengthening of Family-based Agriculture (PRONAF), the Programme for Small Farmers (PROGER Rural) and the Special Credit Programme for Agrarian Reform (PROCERA).

The Committee also notes the information provided concerning the application of *Article 10* of the Convention and refers to its observation on the application of Convention No. 131.

The Committee notes the detailed information provided by the Government on the observations made by the National Union of Labour Inspectors (SNAIT) and requests it to continue to provide information on the measures adopted to give effect to the Convention, and particularly the decisions of the military court of the state in the procedures concerning the events which occurred in "Eldorado dos Carajás".

A request is being addressed directly to the Government on other points of the Convention.

[The Government is asked to report in detail in 2000.]

Syrian Arab Republic (ratification: 1964)

Remuneration of workers

In its earlier observation, the Committee pointed out that *paragraph 1 of Article 12 of the Convention* obliges the competent authority to regulate the maximum amount of advances on wages whenever made and the reasons therefor. The Committee recalled that the present provision of section 51 of the Labour Code only regulates the manner of repayment of advances on wages, and requested the Government to take necessary measures in this regard.

The Committee notes with satisfaction that section 51 of the Labour Code, Act No. 91, has been amended in order to take account of the provisions of *Article 12, paragraph 1,* of the Convention. Accordingly, the new section 51(b) of the Labour Code provides as follows: "The amount of advances which may be made by the employer to the worker to encourage him to take up employment shall be laid down in advance provided that such amounts do not exceed the equivalent of the wage of the worker for six months. The employer shall not retain more than 10 per cent of the worker's wage in settlement of such advances, nor shall he charge any interest on them."

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Brazil, Central African Republic, Democratic Republic of the Congo, Ghana, Guinea, Jamaica, Malta, Panama, Paraguay.*

Convention No. 118: Equality of Treatment (Social Security), 1962

France (ratification: 1974)

Article 3, paragraph 1, of the Convention (branch (d)) (Invalidity benefit). With reference to its previous comments, the Committee notes with interest that section 42 of Act No. 98-349 of 11 May 1998 on the entry and residence of foreigners in France and on the right to asylum has inserted into the Social Security Code sections L.816-1 and L.821-9, according to which Titles I and II of Book Eight of the Social Security Code, providing respectively the supplementary allowance of the National Solidarity Fund (FNS) and the allowance for disabled adults, have been made applicable to foreign nationals possessing residence permits or other documents regularizing their stay in France, *notwithstanding any provision to the contrary*. The Committee understands therefore, from the Government's report, that the provisions of sections L.815-5 and L.821-1 of the Social Security Code, which subject the entitlement of foreign citizens to these allowances to the existence of a reciprocity agreement with the country concerned, have been repealed. It would ask the Government to confirm in its next report the implicit abolition of these provisions if this is the case or, in the negative, to indicate the manner in which they continue to be applied. Please supply also the list of residence permits and documents referred to in sections L.816-1 and L.821-9 of the Social Security Code.

Article 4, paragraph 1 (branch (d)) (Invalidity benefit) and branch (f) (Survivors' benefit). In its previous comments, the Committee had noted that the legislation imposed the condition of residence in France for the provision of social security benefits (in this case invalidity and survivors' benefits) to foreigners insured under the general scheme (section L.311-7 of the Social Security Code), the agricultural scheme (section 1027 of the Rural Code) and the mines scheme (section 184 of Decree No. 46-2769 of 27 November 1946). In its report for the period 1 July 1991 to 30 June 1992, the Government had indicated that concerning invalidity pensions, and invalid widowers' or widows' pensions, the condition of residence shall be fulfilled at the time of making a claim in the case of nationals of a country with which France does not have an agreement. It added that, with regard to survivors' pensions, the benefit of a reversionary pension may, in the case where the deceased insured was not a national of a country with which France has entered into an agreement, be obtained in the following situations: the deceased insured person has already obtained validation of the right to an old-age pension; the insured person who had not exercised the right to the pension had resided in France at the moment of death. The Committee had noted that a condition of residence always exists for non-national beneficiaries, but only at the moment of exercising the right to benefit, that is to say, at the time when presenting the request to receive the invalidity or survivors' pension.

In these conditions, the Committee hopes that, in all cases where the insured or the deceased was subject to the social security system in France at the moment of the contingency, appropriate measures will be taken, concerning branches (d) and (f), to ensure the application of this provision of the Convention for payment of benefits, both in law and practice, without condition of residence for nationals of all States bound by the Convention.

Libyan Arab Jamahiriya (ratification: 1975)

I. *Article 3, paragraph 1, of the Convention (read in conjunction with Article 10)*

(a) In its previous observations, the Committee noted that section 38(b) of the Social Security Act No. 13 of 1980 and Regulations 28 to 33 of the Pension Regulations of 1981 provide that non-Libyan residents receive only a lump sum in the event of premature termination of work, whereas nationals are guaranteed, under section 38(a) of Act No. 13, the maintenance of their wages or remuneration. The Committee emphasized that this difference in treatment between Libyan nationals and foreign workers in the event of the *premature termination* of their work is contrary to the principle of equality set out in this provision of the Convention and it drew the Government's attention to the need to eliminate this distinction in law and in practice. In this respect, the Committee notes with regret that the Government's latest report only repeats the information provided in 1995 and does not refer to any change in the situation, which therefore remains contrary to the provisions of the Convention. In these circumstances, the Committee is bound once again to express the hope that the Government will not fail to reconsider the situation and take all the necessary measures to give full effect to the Convention on this point.

(b) The Committee also notes with regret that the Government's latest report also repeats word for word the information provided in 1995 with regard to the matters raised in its previous observations concerning the application of sections 5(c) and 8(b) of the above Act No. 13. In this situation, the Committee is bound to recall that where the subscription of nationals to the social security scheme is compulsory, as in the Libyan Arab Jamahiriya, the subscription of certain categories of foreign workers to the social security scheme on a voluntary basis only is contrary to the principle of equality of treatment as provided by the Convention (subject to any agreement drawn up between the Members concerned under *Article 9* of the Convention). The Committee hopes once again that the Government will take the necessary measures in the very near future to bring the legislation into conformity with the Convention on this point.

II. Furthermore, the Committee notes with regret that the Government's report does not contain any information in reply to the other matters raised in its previous observations. It is therefore bound to draw the Government's attention once again to these matters.

1. Under the terms of Regulation 16, paragraphs 2 and 3, and Regulation 95, paragraph 3, of the Pensions Regulations of 1981, and without prejudice to special social security agreements, non-nationals who have not completed a period of ten years' contributions to the social security scheme (years that may be supplemented, where appropriate, by years of contributions paid to the social insurance scheme) are entitled neither to an old-age pension nor to a pension for total incapacity due to an injury of non-occupational origin. Furthermore, Regulation 174, paragraph 2, of the above Regulations seems to imply *a contrario* that this qualifying period is also required for pensions and allowances due to survivors of the deceased person by virtue of Title IV of the Regulations, when death is due to a disease or an accident of non-occupational origin. Since such a qualifying period is not required for insured nationals, the Committee recalls that the above provisions of the Pension Regulations of 1981 are incompatible with *Article 3, paragraph 1*, of the Convention. It hopes that the Government will indicate the measures that it has taken or is envisaging to give effect to this provision of the Convention.

2. Regulation 161 of the Pension Regulations of 1981 provides that pensions or other monetary benefits *may* be transferred to beneficiaries resident abroad subject, where appropriate, to the agreements to which the Libyan Arab Jamahiriya is a party. The Committee recalls that, in accordance with *Article 5* of the Convention (read in conjunction with *Article 10*), each Member which has ratified the Convention *must* guarantee both to its own nationals and to the nationals of any other Member that has accepted the obligations of the Convention in respect of the branch in question, as well as to refugees and stateless persons, when they are resident abroad, the provision of invalidity benefits, old-age benefits, survivors' benefits, death grants and employment injury pensions. The Committee considers that the strict application of *Article 5* of the Convention is all the more necessary in the light of the mass expulsions which have taken place in the past of foreign workers from the national territory. It hopes that the Government will indicate in its next report the measures which have been taken or are envisaged to give effect to this basic provision of the Convention in both law and practice.

The Committee hopes that the Government will make every effort to take the necessary measures in the near future. It draws the Government's attention to the possibility of requesting technical assistance from the Office.

Mauritania (ratification: 1968)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 5 of the Convention* (provision of benefits abroad). Further to its previous comments concerning the provision of benefits due to Mauritanian nationals who left Mauritania following the events of 1989, the Government indicates in its report that the National Social Security Fund insures the payment of benefit to Mauritanian nationals who left Mauritania in 1989, and it has already proceeded to regularize the claims of 10 pensioners and 13 other beneficiaries. The Government also states that Senegalese nationals entitled to benefits from the National Social Security Fund have been paid in accordance with Circular No. 120/DG of 28 November 1993 which authorizes the payment of arrears dating from April 1989.
>
> The Committee notes this information with interest. It would like the Government to indicate whether there are other Mauritanian nationals entitled to benefit under the branches accepted by Mauritania (invalidity, old age, survivors' and work injury) who are still waiting to receive the benefit. It also requests further information on whether payments are made in periodic form.
>
> *Articles 7 and 8*. The Committee notes that the Government's report does not provide any information on the provisions made concerning protection of the rights in the course of acquisition of Mauritanian nationals who had to leave the country after the events of 1989. It would appreciate receiving information on the measures taken in this respect (in particular as to old-age pensions).
>
> The Committee also requests detailed information on the practical application of the Convention, in accordance with *point V of the report form*, including statistics of the amount of the benefits transferred to beneficiaries who reside outside the country.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Venezuela (ratification: 1982)

Article 5 of the Convention (read in conjunction with Article 10) (concerning the following branches: (d) Invalidity benefits; (e) Old-age benefit; (f) Survivors' benefit; (g) Employment injury benefit). In its previous comments, the Committee pointed out that the conversion of pensions into a lump sum provided for in Regulation 173 of the General Regulations of the Social Security Act, as amended in 1990, and in section 50 of the Social Security Act, is not in itself sufficient to give full effect to *Article 5* of the Convention. In its reply, the Government states that currently there are no plans to reform the Social Security Act or General Regulations. It states, however, that measures that are planned to promote the application of the Convention focus on the conclusion of bilateral agreements, in particular with countries with a large number of citizens working in Venezuela. The Government refers in this context to its recent signature of the social security agreement with Uruguay and provides a copy of the text in question.

The Committee notes that, under section 6(1) of this bilateral agreement, the economic benefits recognized under the legislation of the contracting parties and provided for in the Convention cannot be reduced, suspended or abolished on the ground that the beneficiary resides on the territory of the other contracting party, and that, under section 6(2), each party is required to provide the benefits due to beneficiaries from the other contracting party, on a basis of equality, in cases where those beneficiaries are resident in a third country. Furthermore, under section 25(b), the competent authorities of the two contracting parties undertake to collaborate in the payment of benefits for the other party in the form to be determined. The Committee would be grateful if the Government would explain how these provisions will be implemented in practice and whether appropriate administrative arrangements have been made.

The Committee recalls that *Articles 5 and 10* of the Convention require the Government to guarantee the provision of invalidity, old-age and survivors' benefits, as well as employment injury pensions, both to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention in respect of the branch or branches in question, and to refugees or stateless persons, when they are resident abroad, irrespective of the new country of residence and without any condition of reciprocity. The Committee therefore hopes that the Government will re-examine the question with a view to ensuring full application of *Articles 5 and 10* of the Convention, both in law and practice.

Articles 7 and 8. The Committee requests the Government to continue to provide in its next reports information on any new agreements concluded with member States for which this Convention is in force, with a view to ensuring the maintenance of acquired rights and the rights in the course of acquisition.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Cape Verde, Democratic Republic of the Congo, Ecuador, Libyan Arab Jamahiriya, Mauritania, Mexico, Rwanda.*

Convention No. 119: Guarding of Machinery, 1963

Algeria (ratification: 1969)

1. *Article 2, paragraphs 3 and 4, of the Convention.* Further to its previous comments, the Committee notes the information contained in the Government's report that Executive Decree No. 90-245 of 18 August 1990 applicable to gas pressure machinery and Executive Decree No. 90-246 of 18 August 1990 applicable to steam pressure machinery. The Committee notes with interest the provisions of these Decrees that meet the requirements of *Article 2* of the Convention with respect to gas and vapour pressure machinery.

The Committee would be grateful if the Government would adopt similar measures of general application to machinery covered by the Convention as a whole to supplement the provision of section 8 of Act 88-07 of 26 January 1988 and thus ensure the application of *paragraphs 3 and 4 of Article 2* of the Convention. In this regard the Committee wishes to reiterate its previous comments that the objective of *Article 2* of the Convention is to guarantee that machines are safe before they reach the user, whereas the provisions of Executive Decree No. 91-05 of 19 January 1991 respecting general safety provisions concern the guarding of machinery once it is in use.

The Committee again draws the attention of the Government to paragraphs 73 et seq. of its 1987 General Survey on safety and the working environment where it indicates that it is essential for the effective application of Part II of the Convention that national legislation designate those parts of machinery that present danger and require appropriate guarding (paragraph 82) and that, until there has been a determination of the machinery and parts thereof that present danger, the prohibition of the sale, hire, transfer in any other manner and exhibition of machinery contained in *Article 2* of the Convention remains ineffective.

The Committee recalls its previous reference to paragraph 85 of the 1987 General Survey to indicate that the definition of dangerous machinery and parts thereof should as a minimum cover all those parts enumerated in *Article 2* of the Convention.

2. *Article 4.* Further to its previous comments, the Committee notes the Government's report and the provisions of Executive Decree Nos. 90-245 and 90-246 of 18 August 1990. It notes that these Decrees do not fully reply to its previous comments. The Committee recalls that section 8 of Act No. 88-07 which prohibits the manufacture, exhibition, putting up for sale, sale, import, hire or transfer in any other manner of machinery that is dangerous, with a view to its use, does not explicitly lay down the responsibility of all those who are involved in the manufacture and delivery of the machinery: the manufacturer, the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor, and their respective agents. The Committee refers to paragraphs 164 to 175 of its 1987 General Survey on safety and the working environment, in which it observes that the general prohibition from manufacturing, selling, hiring or transferring in any other manner machinery which is dangerous is inadequate if it is not accompanied by a provision explicitly requiring these provisions to be applied to the manufacturer, vendor, the person letting out on hire or transferring the machinery in any manner or their respective agents, in order to comply with *Article 4* of the Convention which expressly establishes the responsibility of these persons, and to avoid any ambiguity. The Committee asks the Government to provide information on measures taken or under consideration to ensure that the responsibility of the categories of persons mentioned in *Article 4* are explicitly established in national legislation as well as the sanctions applicable in case of violation.

3. *Articles 6 and 7.* The Committee notes that the Government's report and the provisions of Act No. 88-07 do not fully reply to its previous comments that the use of machinery, any parts of which, including the point of operation, is without appropriate guards, is not prohibited. It recalls its previous indications that sections 40-43 of the Executive Decree No. 91-05, while requiring the dangerous parts of machines to be guarded, they do not expressly prohibit the use of machines, the dangerous parts of which are not guarded. The Committee refers again to paragraph 180 of its 1987 General Survey on safety and the working environment, where it is stated that *Article 6, paragraph 1*, of the Convention is formulated as a general prohibition to be included in the national legislation and that, in order to observe this provision, it is not enough to require the guarding of machines which are used without at the same time requiring that the use of machines without appropriate guards is forbidden.

The Committee recalls the need for the legislation to be clear that the obligation to ensure compliance with this prohibition rests on the employer, in accordance with *Article 7* of the Convention.

The Committee requests the Government to provide information on the measures taken or envisaged to give effect to the provisions of the Convention on these points.

Croatia (ratification: 1991)

1. The Committee notes the comments made by the Union of Autonomous Trade Unions of Croatia, in which the Union states that the Government's report on the application of this Convention would in general have been completely acceptable had the

statements been supported by figures. It indicates that, had the Government submitted the reports of previous years with figures, one could have seen that the Convention was not fully respected. It adds that the report should have contained also reports by labour inspectors made over a certain period of time, backed by figures to indicate the state of matters, and an explanation of how many and what types of companies had been visited by labour inspectors.

The Committee notes the Government's reply which indicates that the Government had enclosed all information which it had at its disposal with the report on the application of the Convention. The Government adds that if the Committee considers that it is necessary to submit additional information, it would like to be so informed for it to give orders to the competent inspection services to collect such information for submission with its next report.

The Committee recalls that *Article 15, paragraph 2, of the Convention* requires the Government to provide appropriate inspection services for the purpose of supervising the application of the provisions of the Convention, or satisfy itself that appropriate inspection is carried out. The report form requests details of the inspection services provided for such supervision or details of the steps taken to ensure that appropriate inspection is carried out, including the nature of the inspection arrangements. In addition the Committee draws the Government's attention to *point V of the report form* which asks the Government to give a general appreciation of the manner in which the Convention is applied including, for instance, extracts from official reports and information on any practical difficulties in the application of the Convention. The Committee would be grateful if the Government would include all such information in its next report.

2. The Committee notes from the Government's report that, in 1996, the former Law on Occupational Safety and Health (*Official Gazette*, Nos. 19/83, 17/86, 46/92, 26/93 and 29/94) was in force. Since then the new Law on Occupational Safety and Health (*Official Gazette*, Nos. 59/96 and 94/96) has come into force on 25 July 1996, but that its application only commenced on 1 January 1997. The Committee also notes that, while the Government's last report covers the period until 1997, the indications given under the various Articles of the Convention are those of the previous law. Moreover the Committee notes that: (a) a certain number of provisions of the Convention are not applied by the provisions of national legislation referred to by the Government in its report or due to absence of any provisions on the matter; (b) section 113(1) of the 1996 Law on Occupational Safety and Health requires the designated Minister to adopt regulations for the implementation of the Law within one year following the entry into force of the Law. In view of this fact, the Committee would be grateful if the Government would communicate the texts of regulations currently in force that implement the provisions of the Convention and replace the ones cited in the Government's report whose validity seems limited by section 113(1) of the 1996 Law on Occupational Safety and Health. The Committee therefore requests the Government to communicate a detailed report indicating the provisions of national laws and regulations effectively applying the provisions of the Convention.

[The Government is requested to report in detail in 1999.]

Democratic Republic of the Congo (ratification: 1967)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Articles 2 to 4 of the Convention.* For several decades the Committee has drawn the Government's attention to the absence of measures giving effect to the above-mentioned

> Articles and to the need to make provision in the national legislation for, or to establish by other equally effective measures, the prohibition of the sale, hire, transfer in any other manner and exhibition of machinery of which the dangerous parts are without appropriate guards, with the obligation to respect this prohibition being placed on the person selling, hiring, exhibiting or transferring the machinery in any other manner, or on their representatives.
>
> In its reports, the Government referred on several occasions to a draft Order relating to the guarding of machinery and to the review of the Labour Code as part of which provisions designed to give effect to the Articles of the Convention in question would be adopted. The Committee notes that this position was confirmed by government representatives during the technical advisory mission conducted by the ILO in 1997.
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> The Committee once again express the hope that in the very near future the Government will take all the necessary measures to ensure finally that the provisions of *Articles 2 to 4* of the Convention are applied.

Latvia (ratification: 1993)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> Referring to its previous comments, the Committee recalls the observation made by the Free Trade Union Federation of Latvia (LBAS) alleging that the Convention was only partly applied because of the use of obsolete machines, and pointing out the high risk of accident to which employees are exposed using such machines.
>
> The Committee recalls that under *Article 1 of the Convention*, the Convention applies to all power-driven machinery, new or second-hand. With respect to all such machinery, *Articles 2 and 6* prohibit the sale, hire, exhibition and transfer in any other manner, as well as the use of machinery if their dangerous parts specified in *paragraphs 3 and 4 of Article 2* are without appropriate guards or are not protected by other equally effective measures. The obligation to ensure compliance with the above-mentioned provisions rests, in accordance with *Articles 4 and 7*, on the vendor, the exhibitor, the person letting out on hire or transferring the machinery in any other manner, the manufacturer when he sells machinery, lets it out on hire, transfers it in any other manner or exhibits it, on their respective agents, when appropriate under national laws or regulations, and on the employer.
>
> The Committee requests the Government to indicate the measures taken to apply the above-mentioned provisions of the Convention to all categories of power-driven machinery, including those which are obsolete but still used. Please supply the English translation (if available) of the national legislation referred to in the Government's first report giving effect to the Convention with respect to all categories of machinery.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Madagascar (ratification: 1964)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In its previous comments, the Committee expressed the hope that the implementing texts of the Occupational Safety and Health Code which, according to the Government, were being drafted would give effect to the provisions of the Convention, particularly *Articles 2 and 4* which provide that the sale, hire, transfer in any other manner and exhibiting of machinery of which the dangerous parts specified in *paragraphs 2 and 3 of Article 2* are without appropriate guards must be prohibited, and that the obligation to ensure compliance with these provisions must rest on the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor, as well as on the manufacturer when he sells machinery, lets it out on hire, transfers it in any other manner or exhibits it.

In the absence of any information from the Government, the Committee once again requests information on any progress made in this respect including a copy of the implementing texts, as soon as they have been adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Morocco (ratification: 1974)

Article 11 of the Convention. The Committee refers to its previous comments in which it drew the Government's attention to the need to take measures to ensure that a worker may use or be required to use machinery without the guards provided being in position, and that no worker may make such guards inoperative. The Committee notes from the Government's report that the regulatory part of the draft Labour Code which would provide expressly that no worker may use machinery of which the guards are inoperative is dependent on the fate of the principal law which has been submitted to Parliament since July 1995. It further notes from the Government's report that if the prevailing differences of views that have to date delayed the adoption of this draft continue, a separate text that takes into account the comments of the Committee of Experts will be proposed to the competent authorities at the appropriate time.

The Committee trusts the Government will shortly take the necessary measures for the adoption of the relevant provisions, if necessary by means of a separate regulatory text, given the fact that the adoption of the draft Labour Code started at least ten years ago and given the difficulties mentioned by the Government that are delaying its adoption, and thus ensure the application of this Article of the Convention. It would be grateful if the Government would provide a copy of these provisions as soon as they have been adopted.

Article 17. The Committee recalls that for more than 21 years it has been drawing the Government's attention to the lack of any detailed measures to ensure the application of the provisions of the Convention to machinery used in agriculture. The Committee notes that the Government refers once again in its report to section 37 of the Dahir of 24 April 1973, which requires that agricultural machinery be installed and maintained in the best possible conditions of safety.

In this regard the Committee reiterates its previous comments that section 37 of the Dahir of 1973 is of a general nature and only partly applies the provisions of the Convention as regards this sector. It wishes to point out furthermore, that the prohibition of the sale, hire, transfer in any other manner and exhibition of such machinery is not in any way covered by this section as required by the Convention. The Committee trusts that the Government will take the necessary measures, possibly in the draft Labour Code now before Parliament, or in a separate regulatory text, pending the adoption of the draft Labour Code, in order to give full effect to the Convention on this point.

Point V of the report form. The Committee notes from the Government's report that, even though there were no inherent difficulties in national legislation that impeded the proper application of the Convention, there were difficulties arising from technical and technological changes encountered in the work world that could amount to major obstacles to labour inspectors in their task of controlling occupational safety and health. It notes with interest the measures taken by the Government to overcome these difficulties which consisted of periodic training courses for labour inspectors, in particular in the area of occupational safety. The Committee wishes to underline and support the Government's wish for ILO technical assistance in: (a) the preparation of practical guidelines on machine utilization; (b) financing of apprenticeships in specialized training institutions; and (c) the organization of tripartite training seminars. The Committee hopes the Office would be in a position to respond to such request for technical assistance.

Sierra Leone (ratification: 1964)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> For a number of years, the Committee has drawn the attention to the fact that national legislation does not contain provisions to give effect to *Part II of the Convention* (prohibition of the sale, hire, transfer in any other manner and exhibition of unguarded machinery) and that it does not provide for the full application of *Article 17 of the Convention* (which applies to all sectors of economic activity), as it is not applicable to certain branches of activity, inter alia, sea, air or land transport and mining.
>
> Since 1979, in reply to the Committee's comments, the Government has indicated in its reports that a Bill to revise the 1974 Factories Act was being drafted and would contain provisions consistent with those of the Convention, and would apply to all the branches of economic activity. In its latest report (received in 1986), the Government indicates that the draft Factories Bill, 1985, has been examined by the competent parliamentary committee and is to be submitted to Parliament for adoption.
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> With its report for the period ending 30 June 1991, the Government supplied a copy of extracts of the Factories Bill containing provisions which should give effect to Part II of the Convention. In this connection, the Government was requested to indicate the stage of the legislative procedure reached by the Bill and the body which was in the process of examination of the Bill. Since no information has been provided by the Government in this respect, the Committee once again expresses the hope that the above-mentioned Bill will be adopted in the near future and requests the Government to provide a copy of this text, once it has been adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Denmark, Finland, Guinea, Malaysia, Niger, Paraguay.*

Convention No. 120: Hygiene (Commerce and Offices), 1964

Guinea (ratification: 1966)

The Committee takes note of the information provided by the Government in answer to its previous observation.

1. The Committee notes that the Government, in implementation of section 171 of the Labour Code, will be submitting draft Decrees concerning sanitary facilities in workplaces and concerning the provision of drinking-water and non-alcoholic drinks in enterprises and establishments. The Committee also notes the draft Decree establishing Committees on Hygiene, Safety and Working Conditions (CHSCT).

2. The Committee recalls that, since 1989, it has been asking the Government to adopt ministerial orders, in accordance with section 171 of the Labour Code, in the following areas: ventilation *(Article 8 of the Convention)*; lighting *(Article 9)*; drinking-water *(Article 12)*; seats for all workers *(Article 14)*; and noise and vibrations *(Article 18)*, in order to give effect to these provisions of the Convention. The Committee hopes that

such Decrees will be adopted after consultation with the representative organizations of employers and workers, in accordance with *Article 5* of the Convention.

3. *Article 1 of the Convention.* Lastly, the Committee recalls its previous observation in which it drew attention to the fact that all workers who are mainly engaged in office work, including workers in the public services, are covered by the Convention. The Committee hopes that the Government will take the necessary measures in the near future to ensure full application of the Convention to the public services and requests the Government to indicate the progress made in this regard.

Madagascar (ratification: 1966)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> For many years, the Committee has been drawing the Government's attention to the fact that there are no specific laws or regulations to give full effect to *Articles 14 and 18 of the Convention*, which provide that seats shall be supplied to all workers without distinction on grounds of sex, and that noise and vibrations likely to have harmful effects on workers shall be reduced as far as possible. Since 1975, the Government has stated in its reports that the Order envisaged by the Labour Code of 1975 would give full effect to the above provisions of the Convention. The Committee notes the adoption on 25 August 1995 of a new Labour Code (Act No. 94-029), under section 208 of which the provisions respecting occupational health and safety of the 1975 Labour Code remain in force. The Committee also notes the information provided by the Government in its report to the effect that the National Assembly has adopted a Code respecting health, safety and the working environment and that the texts issued under the Code, which are currently being prepared, will take the provisions of the Convention into consideration. The Committee trusts that the Government will report the measures adopted in this respect in the near future and that it will provide copies of the provisions as adopted, including the text of the above Code when it has been enacted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Paraguay (ratification: 1967)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In comments it has been making since 1973, the Committee has requested the Government to take the necessary measures to give effect to the following Articles of the Convention: *Article 10* (maintenance of a comfortable and steady temperature); *Article 18* (reduction of noise and vibrations); and *Article 4(b) of the Convention* (to give such effect as may be possible and desirable under national conditions to the Hygiene (Commerce and Offices) Recommendation, 1964 (No. 120)). In its report for the year 1992, the Government indicated that Regulations concerning safety and health and occupational medicine had been adopted and would be sent to the Office as soon as they were printed. The Government's latest report refers to Decree No. 14390 which approves the Regulations concerning safety and health and occupational medicine and Decree No. 14204 which establishes the regulations concerning the National Occupational Safety and Health Council and indicates that the draft national safety and health and occupational medicine Act is being reviewed by the National Congress and will be sent to the Office as soon as it is adopted. The Committee trusts that the new legislation will ensure the full application of the Convention and requests the Government to send copies of Decrees Nos. 14390 and 14204, as well as any other relevant legislation adopted, with its next report.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Belarus, Bulgaria, Czech Republic, Denmark, Djibouti, Finland, Ghana, Iraq, Japan, Latvia, Lebanon, Poland, Sweden, Tunisia*.

Information supplied by *Spain* in answer to a direct request has been noted by the Committee.

Convention No. 121: Employment Injury Benefits, 1964 [Schedule I amended in 1980]

Bolivia (ratification: 1977)

In response to the Committee's previous comments, the Government states that, in particular, if at the end of the treatment, the worker continues to suffer from a reduction in his/her working capacity, the benefits to be disbursed shall, in future, be governed by the Act respecting pensions and the new schedule fixing levels of incapacity. In this respect, the Committee notes the adoption of Act No. 1732 of 1996 and its Regulation established under Supreme Decree No. 24469 of 1997. In light of the fundamental changes introduced into the pension scheme by this new legislation, the Committee would be grateful if the Government would provide a report containing detailed information in respect of the effect of the new legislation on each of the Articles of the Convention, including statistical data on the scope of application and the level of benefits, as required by the report form approved by the Governing Body.

The Committee also requests the Government to communicate detailed information in respect of the legal provisions or regulations which ensure the application of the provisions of the Convention which do not fall within the scope of the new Act respecting pensions and in particular those relative to medical care (*Article 12 of the Convention)* and the temporary capacity for work (*Article 13)*.

[The Government is asked to report in detail in 1999.]

Libyan Arab Jamahiriya (ratification: 1975)

The Committee notes with regret that the Government's report has not been received for the fifth consecutive time. It must therefore repeat its previous observation which read as follows:

> *Article 21 of the Convention.* With reference to its previous comments, the Committee notes the Government's statement that, in accordance with sections 28 and 34 of the Social Security Act, No. 13 of 1980, the level of cash benefits currently payable for long-term benefits is reviewed following substantial changes in the cost of living or wage levels. It notes, however, that the Government's report does not contain the statistics requested in order to assess the manner in which this Article of the Convention is applied in practice. It therefore once again requests the Government to supply the statistics called for in the report form under this Article of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

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In addition, requests regarding certain points are being addressed directly to the following States: *Croatia, Libyan Arab Jamahiriya*.

Convention No. 122: Employment Policy, 1964

Algeria (ratification: 1969)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

> 1. The Committee took note of the Government's report for the period ending June 1996. It regrets that it replies only partly to the points raised in its previous observation. The Committee notes that the global statistical data supplied on the active population, employment and unemployment relate to 1993 and 1994 but not to the period covered by the report. It hopes that the Government will supply in its next report statistical data as detailed and up to date as possible on the level and trends, during the period in question, of employment, underemployment and unemployment, at national level and in the various regions, by sector of activity, sex, age and level of qualifications. The Committee recalls in this respect that it is essential for employment policy decisions to be made on the basis of precise knowledge of the situation and trends in activity and employment. It requests the Government to describe the measures taken or under consideration to improve collection and analysis of the relevant statistical data.
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> 2. Basing itself on information and analyses made available by the competent services in the ILO, the Committee believes it can summarize the evolution of employment and unemployment since 1994 in the following manner. The hydrocarbons sector, as well as agriculture which has profited from favourable climatic conditions, are mainly responsible for the increased production of 3.9 per cent in 1995 and 3.4 per cent in 1996, while industrial production has contracted sharply. In this context, the employment increase both in the modern sector and the informal sector has proved to be insufficient to absorb the growth in the active population, and the unemployment rate which was already 26.5 per cent in 1994, has reached the unprecedented rate of 28.3 per cent in 1996. The Committee is bound to note the contrast between the progress made within the framework of the structural adjustment programme agreed with the International Monetary Fund, in terms particularly of budgetary balance, a noteworthy reduction in the inflation rate and the stabilization of external accounts, and the continuing deterioration in the employment situation, where young people looking for their first jobs are the main victims. Since the Government has not supplied the information required on this matter, the Committee is bound to express its concern in regard to the effective pursuit "as a major goal" and "within the framework of a coordinated economic and social policy" of "an active policy designed to promote full, productive and freely chosen employment". It trusts that the Government will supply in its next report information demonstrating that the measures taken or contemplated in regard to investment policy, monetary and budgetary policies, industrial and regional development policies and prices, incomes and wages policies are contributing to pursuing the objectives of the Convention. The Committee also requests the Government to specify how it envisages the impact on employment of implementing its privatization programme.
>
> 3. The Committee notes the general indications relating to the new arrangements for youth integration into employment. It notes that the Government confirms the reorientation of labour market policy measures in favour of the establishment of micro-enterprises and refers to the launching of pre-recruitment contracts. The Committee would be grateful if the Government would supply any available assessment of the contribution of these arrangements to the lasting integration in productive employment of those concerned. Furthermore, it requests it to supply in its next report on the application of Convention No. 88 full information on the renovation of the public employment service which it mentions.
>
> 4. The Committee particularly regrets that the Government has not supplied the information requested showing how consultation with all the persons affected on employment policies is assured in practice, as required by *Article 3 of the Convention*. It is bound to stress once again the importance it attaches to the full application of this essential provision of the Convention, particularly in a context of high unemployment and wide-ranging structural reforms. The Committee recalls that it requested the Government to describe the consultations

held within the framework of the Economic and Social Council, providing all relevant examples of recommendations, opinions, reports or studies. It hopes to find full information on this matter in the Government's next report.

Bolivia (ratification: 1977)

1. The Committee notes the Government's report and the detailed information provided by the Government in respect of the provisions of the Political Constitution of Bolivia, in its revised version of 1994, relating to labour matters. Moreover, the Government states that the Ministry of Labour and Small Enterprises has been requested to formulate employment policies, to give support to the study to evaluate measures to improve the organization of the employment market and to formulate policies to promote and develop small enterprises. In its previous comments, the Committee recalled that it had considered that many aspects of an active employment policy go beyond the immediate competence of the Ministry responsible for labour questions, so that the preparation of a full report on the Convention may require consultation with the other ministerial or government agencies concerned, such as those, for example, who are responsible for planning, economic affairs and statistics. The Committee, therefore, hopes that the Government will provide a detailed report with full information as required by the report form for the Convention and, in particular, the measures adopted to ensure that the objectives of an active employment policy are taken into consideration when determining other economic and social objectives. The Committee trusts that the Government will make every effort to provide, in its next detailed report on the application of the Convention, the statistical data concerning the size and distribution of the labour force and the nature and extent of unemployment, which is an indispensable stage in the formulation and implementation of an active employment policy, as laid down in *Articles 1 and 2, of the Convention*.

2. Moreover, the Committee hopes that, in its next report, the Government will be able to include data in respect of the results achieved as a consequence of the measures intended to satisfy the needs of the most disadvantaged categories of workers who have difficulty in retaining their employment or in obtaining lasting employment, such as workers who are affected by administrative restructuring or rationalization of industries, women, young people, the disabled or the long-term unemployed. Please indicate the effect achieved by the measures provided for within the framework of regional and local programmes for strengthening small enterprises and other employment programmes.

3. The Committee would also be grateful if the Government would provide information, in its next report, in respect of the measures to coordinate education and vocational training policies with the employment policy, to ensure that each worker shall have the fullest opportunity to qualify for and use his/her skills and endowments in a job for which he/she is well suited.

4. Finally, the Committee again notes that, despite the numerous requests made by the Committee and the Conference Committee on the Application of Standards, the Government has not provided information in respect of the consultations concerning employment policy to discuss the measures to be taken with a view to taking fully into account the experience and views of the persons consulted and, furthermore, in obtaining their full cooperation in the task of formulating and enlisting the necessary support for the implementation of such a policy. The consultations with the representatives of the persons concerned should include representatives of workers' and employers' organizations and also representatives from other sectors of the economically active population such as those working in the rural and informal sectors. The Committee trusts that the Government will

include the detailed information required by the report form in respect of *Article 3 of the Convention* in its next report.

Brazil (ratification: 1969)

1. The Committee notes the Government's report for the period ending June 1998, and the attached documents on the operation and evaluation of the programme for the generation of employment and incomes (PROGER), the Fund for the Protection of Workers and other measures adopted by the Government relating to the labour market. The Government reports new job losses in the formal sector (335,646 jobs in 1997). The Government states that, despite the reduction in the level of employment, there was an increase in the real incomes of workers and a decrease in social conflict. The labour market in Brazil is undergoing major transformation, with movement in the labour force from the industrial sector towards the services sector, and from the formal to informal sectors. The integration of the Brazilian economy in international markets with resulting effects on economic stability is giving rise to far-reaching changes in the labour market. In this context, the Ministry of Labour is adopting measures to promote employment and protect the unemployed by developing new employment opportunities. In view of the importance of the structural reforms undertaken in recent years, and the consequences that financial crises can have on the labour market, the Committee would once again be grateful if the Government would provide information in its next report on the manner in which the measures adopted in the principal areas of economic policy are kept under review with regard to their impact on employment, in accordance with *Articles 1 and 2 of the Convention*. The Committee trusts that the Government will include in its next report full information on the manner in which the measures taken in particular in such fields as fiscal, monetary and exchange rate policy, investment policy, industrial policy, trade policy and prices, incomes and wages policies, contribute to the attainment in practice of the employment objectives of the Convention (see the report form for *Article 1*).

2. According to the data forwarded by the Office's multidisciplinary advisory team, the informal sector grew from 52 per cent of the total economy in 1990 to 59.3 per cent in 1996. The number of workers without workbooks (*sem carteria assinada*), and therefore without appropriate legal protection, also increased. The Committee would be grateful if the Government would indicate the measures which are being adopted to increase employment opportunities and improve conditions of work in the informal sector and facilitate its progressive integration into the national economy. The Government may consider it appropriate to refer in its next report to the relevant provisions of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), and the Job Creation in Small and Medium-sized Enterprises Recommendation, 1998 (No. 189), which may provide guidance for its action. In this respect, it would be useful to be provided with detailed information on the situation, level and trends of employment, unemployment and underemployment, not only in the principal industrial regions, but also in the north, north-east and the rest of the country.

3. The Committee would be grateful if the Government would include information in its next report on action taken as a result of the assistance received from the Office with a view to promoting full, productive and freely chosen employment and strengthening the institutions responsible for intervening in the labour market and for coordinating vocational training activities with prospective employment opportunities (*Part V of the report form*).

4. The Committee takes due note of the new information transmitted by the Government on the activities of the Advisory Board of the Assistance Fund for Workers (CODEFAT) and the employment commissions established at the state level. The Committee recalls once again that the consultations required by *Article 3* of the Convention should cover all aspects of economic and social policy which have an impact on employment. In view of the characteristics of the economically active population in Brazil, the consultations required by this provision of the Convention should also involve representatives of persons who work in the rural sector and the informal sector. The Committee once again requests the Government to give effect to this important provision of the Convention, both with regard to the formal sector and the informal sector of the labour market.

Costa Rica (ratification: 1966)

1. The Committee notes the information included in the Government's report received in January 1998, according to which the open unemployment rate fell from 6.2 per cent (in 1995) to 5.2 per cent (in 1996) and rose again slightly to 5.7 per cent (in 1997). Between 1994 and 1996, employment in the public sector fell to 7,197, continuing the downward trend in staffing levels in that sector. The Government refers to the voluntary job reduction programme in the public sector and the restructuring programme, details of which are given for various institutions. The purpose of these programmes is to reorientate the State's role and reduce the fiscal deficit. The report also describes a reintegration programme aimed at strengthening the National Employment Exchange, improving training for former public servants and promoting the creation of micro-enterprises. The Committee notes that, according to the analysis carried out by technical specialists of the multidisciplinary team at San José in Costa Rica, the existence of a range of social development and employment programmes, together with sustained efforts in the area of education and training, have resulted in relatively low levels of unemployment, underemployment and poverty. In 1997, there were increases both in employment and in wages.

2. The Committee recalls that, in its previous observations, it referred to the report (in document GB.266/8/1 of June 1996) of the Committee set up to examine the representation made by the Latin American Central of Workers (CLAT) under article 24 of the ILO Constitution, alleging non-observance by Costa Rica of the Employment Policy Convention, 1964 (No. 122). The Governing Body invited the Government to provide, in its subsequent reports under article 22 of the Constitution, comprehensive information on the application of the Convention, and to clarify in particular:

(i) the effect on employment, either recorded or anticipated, of the macroeconomic policies implemented as part of the structural adjustment programme to reduce public spending;

(ii) the number of workers affected by the programme to reduce public employment, the measures taken to facilitate their reintegration into the private sector and the results achieved;

(iii) the manner in which the representatives of the persons affected by the measures to be taken, and in particular employers' and workers' representatives, are consulted about employment policies.

3. In this regard, the Committee notes that in May 1998, the Ministry of Labour asked the Ministry of National Planning and Economic Policy for additional information on the above-mentioned points. The Committee trusts that the Government in its next

report will consider these points and that it will also include the information requested in the report form on the results of measures taken to harmonize the supply and demand of labour with structural changes, including copies or extracts of reports, surveys and inquiries and statistical data on the situation of the labour market *(Part VI of the report form)*. The Government is asked in particular to describe the procedures that have been adopted to ensure that due consideration is given to the impact on employment of measures adopted with a view to achieving economic and social objectives and that the principal measures of employment policy are decided and kept under review within the framework of a coordinated economic and social policy *(Article 2 of the Convention)*.

4. *Article 3.* The Committee notes the communication of August 1997 from the *Comité Interconfederal Costarricense*, which was forwarded by the Office to the Government in 1997 to allow it to formulate its own comments. The *Comité Interconfederal Costarricense* states that it has not participated in any manner or at any time in the formulation of the Government's employment and wages policy. In its view, the fact that employment policy is not discussed with workers' representatives constitutes a violation of *Article 3 of the Convention*. The Government has indicated that in general, in those public institutions where restructuring programmes were implemented, committees were set up in which staff could participate. In addition, in most of the restructuring processes, trade union leaders were consulted. Consultations took place in the private sector involving the employers' councils who were asked for their support for the training and reintegration programmes. The employers in general have been openly in agreement with the proposed changes. The Committee notes the preceding observations and recalls the importance of obtaining the full cooperation of the representatives of the interested parties in the work of formulating employment policy and of obtaining the support needed for its implementation. The Committee trusts that the Government will include in its next report information on the consultations that have taken place with representatives of employers' and workers' organizations (and with representatives of other sectors of the economically active population such as those employed in the rural sector and the informal sector) with regard to employment policy.

Czech Republic (ratification: 1993)

1. The Committee refers to its previous observation and notes the two consecutive reports submitted by the Government for the period ending June 1998. The Government states that, following a period of relative stability, the rate of unemployment increased from 3.5 per cent to 4.3 per cent in 1997 owing to a marked slow-down in economic growth at the end of the period. According to the latest OECD forecasts, the unemployment rate would rise to 5.8 per cent in 1998. The Committee nevertheless notes that, despite this recent deterioration, the employment situation continues to compare favourably with that of other European countries which are in a period of transition to a market economy and with the majority of Western European countries.

2. The Government emphasizes that unemployment particularly affects certain groups of the economically active population, such as unskilled workers, young people with no work experience, the Roma ethnic minority and persons with disabilities. Moreover, levels of unemployment are highest in the regions of North Bohemia and North Moravia, which are undergoing industrial restructuring, and in mainly agricultural areas. The Government states that, in order to stem this rise in structural unemployment, it has adjusted its employment policy to strengthen measures targeting the most vulnerable regions and groups of workers. Emphasis is placed, in particular, on the development of infrastructure in the transport and service industries and the promotion of small and

medium-sized enterprises as sources of new employment opportunities, as well as on retraining, not only for jobseekers, but also as a preventative measure for workers whose jobs are at risk as a consequence of structural changes. The Committee notes in this respect that refocusing of active labour market policy measures appears to have resulted in a decrease in the number of beneficiaries during the period in question. The Committee would be grateful if the Government would provide in its next report any evaluation of the effectiveness of these measures in terms of placing those concerned in employment.

3. The Committee notes with interest the detailed information provided by the Government in respect of the changes in employment and unemployment, as well as the labour market policy measures implemented. The Committee recalls that, under *Article 2 of the Convention*, the measures which are to be adopted, with a view to promoting full, productive and freely chosen employment, shall be decided and kept under review "within the framework of a coordinated economic and social policy", and hopes that the Government will also transmit in its next report the information required by the report form on the manner in which general economic policies in areas such as monetary and fiscal policies, trade policies or prices, incomes and wages policies contribute to the pursuit of the employment objectives of the Convention. The Committee requests the Government, in particular, to specify the impact which the Stabilization and Recovery Programme adopted in May 1997 has had or is expected to have on employment.

4. The Committee notes that the questions relative to employment policy are discussed by the social partners, both within the framework of the Council for Economic and Social Agreement, which was established in 1997, and in the advisory committees of employment offices. The Government states in particular that the preparation of a new national employment plan will be subject to in-depth debate in the Council for Social and Economic Agreement. The Committee requests the Government to provide detailed information in its next report on the activities of the Council, the opinions issued and the manner in which they are taken into account, in accordance with the provisions of *Article 3* of the Convention.

Ecuador (ratification: 1972)

1. The Committee notes the Government's reports received in June and October 1998. The Committee notes that the urban unemployment rate, which had reached 10.4 per cent, fell in 1997 to 9.2 per cent (according to official data), which appears to be high in comparison with the first half of the decade. According to the information transmitted by the ILO's Multidisciplinary Advisory Team for the Andean Countries, it is necessary to create productive employment every year to absorb the very high growth in the economically active urban population, reduce the high level of open unemployment which particularly affects women and young people from poor households and reduce the high level of informalization of the economy. Thirty-two per cent of the economically active urban population is employed in the formal private sector, while 47 per cent is engaged in informal urban activities. The Committee recalls that in its previous comments it expressed interest in the measures envisaged to resolve the problem of unemployment and underemployment, through the declaration and pursuit of an active policy of full productive employment, within the meaning of the Convention. The Committee would be grateful if the Government would provide information in its next report on the manner in which the objective of full employment has been taken into account in the context of the Government's current economic policy *(Article 1 of the Convention)*.

2. The Committee notes that, according to the information published by the Economic Commission for Latin America and the Caribbean (ECLAC), the minimum

wage, including supplementary emoluments, suffered an erosion of around 3 per cent, with wage increases failing to compensate for the rise in the level of prices. The Committee once again recalls that employment policy should be an essential element of any policy for promoting the growth and fair sharing of national incomes (see Paragraph 21 of Recommendation No. 122). The Committee requests the Government to provide data in its next report on the incomes policy so that it can assess the manner in which the remuneration of workers contributes to economic development and raising levels of living, which are among the objectives set out in *Article 1*.

3. The Committee recalls that in February 1990 the National Employment Institute (INEM) established the National Employment System and has been implementing the Emerging Employment and Social Development Programme. Furthermore, with the technical assistance of the ILO, the INEM provides technical support for the process of social dialogue. The Committee would be grateful if the Government would provide statistical data in its next report so that it can examine the results achieved in terms of the creation of productive employment by the programmes implemented by the Government. Please also continue providing information on the action taken as a result of the advice provided by the Office in the field of employment, as requested in *Part V of the report form*.

4. In its previous comments, the Committee noted a project to promote dialogue on labour issues, which had also received the technical support of the ILO. The Committee notes that the consultations have been suspended for lack of consensus and owing to the political transition. The new Government has declared its intention of reactivating the plan for social dialogue. The Committee trusts that the Government will provide information in its next report on the consultations held with representatives of organizations of employers and workers, through which their cooperation has been secured in formulating and pursuing the employment policy *(Article 3)*. The Committee would be grateful if the Government would indicate, taking into account the importance of the rural sector and the informal sector, whether it has managed to hold consultations concerning employment policy with representatives of those sectors. Please also indicate whether formal consultation procedures have been established.

5. The Committee notes that in the tripartite agreements that have been concluded it is stated that independent employment is a possibility available to all members of society in Ecuador to become employers through the creation and development of single-person enterprises or associative enterprises that are mutually owned, by joining with other persons interested in providing capital, material goods or knowledge to set up and participate in the operation of this type of enterprise. The Committee would be grateful if the Government would state whether special programmes have been implemented to facilitate the creation of sustainable employment through micro-enterprises. In this regard, the Government may find it useful to consult the provisions of the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189).

Finland (ratification: 1968)

1. The Committee notes with interest the Government's report for the period ending in May 1998, which contains comprehensive and useful information and transmits the observations made by the Central Organization of Finnish Trade Unions (SAK), the Confederation of Unions of Academic Professionals in Finland (AKAVA) and the Finnish Confederation of Salaried Employees (STTK).

2. The Committee notes that strong and sustained economic growth during the period has encouraged job creation and led to a fall in unemployment. The rate of

unemployment, which in 1995 reached 17 per cent, fell to 14.5 per cent in 1997 and, according to OECD forecasts, should fall further to 12.4 per cent in 1998. The Government indicates that the growth in employment has benefited above all the most skilled young people, while older workers are particularly badly hit by long-term unemployment. The STTK considers that the persistence of long-term unemployment, which accounts for almost a third of total unemployment, reflects not only changes in the demand for qualifications on the labour market, but also a degree of discrimination against older people in the world of work. The STTK also draws attention to the slower fall in unemployment among women, who are increasingly being offered employment on fixed-term contracts and experience recurrent periods of unemployment, and to the number of jobs accounted for by involuntary part-time employment.

3. The Government considers that the improvement in the employment situation clearly shows the success of its policy and states that, through two successive agreements on incomes policy, employees have given their support to the Government's efforts to stimulate competitiveness and re-establish economic equilibrium. Furthermore, the Government considers that European Monetary Union should have a positive impact on growth by reducing interest rates and currency exchange risks. The Committee notes that the Government has attached to its report a copy of the National Action Plan for Employment which was based on the Guidelines produced by the extraordinary European Council on Employment which took place in Luxembourg in November 1997. The Committee asks the Government to continue to provide detailed information on the manner in which, in accordance with *Article 2 of the Convention*, the measures needed to promote employment are determined and reviewed regularly within the framework of a coordinated social and economic policy.

4. The Committee notes that since early 1998 labour market policy has been undergoing a general reform aimed at strengthening the advisory, training and job placement activities of the public employment service with a view to preventing marginalization of the unemployed. The STTK considers that this reform is appropriate, since it places the emphasis on the efficiency of the job-seeking process rather than on monitoring the unemployed, while the AKAVA points out that it has the advantage of stressing the quality of the measures adopted. The SAK, however, points out that employment office staff are too few in number, a problem which mostly affects the long-term unemployed. In addition, employment subsidies have been adjusted to make them contribute more effectively to the employment and training of the long-term unemployed. The Committee invites the Government to indicate the results of the different initiatives aimed at ensuring more effective targeting of active labour market policy measures, in particular with regard to older workers and the long-term unemployed.

5. *Article 3.* The Committee notes with particular interest that the different measures taken under the Government's employment programme, especially those aimed at ensuring "controlled flexibility" in the labour market with regard to hours of work or job security, have been drawn up in close consultation with the social partners. In this context, the Committee hopes that the Government will be able in its next report to indicate any further progress made in the fight against unemployment.

France (ratification: 1971)

1. With reference to its previous observation, the Committee notes the Government's report for the period from June 1997 to May 1998, which also contains the observations made by the General Confederation of Labour (CGT). The Government indicates that growth, sustained by the recovery of domestic demand, has led to an

improvement in the employment situation. The unemployment rate, which in June 1997 reached a record level (12.6 per cent), has started to fall (12 per cent in March 1998) and this has especially benefited young people below the age of 25 years. The Government nevertheless considers that this recent progress must not be allowed to conceal structural imbalances in the labour market, which are resulting in particular in high levels of unemployment among the least skilled, a high level of long-term unemployment, difficulties in integrating young people in the labour market and the rise of certain forms of precarious employment, such as temporary employment or involuntary part-time employment. The CGT emphasizes in this respect that the increasing insecurity of employment in its various forms — short-term contracts, temporary work, involuntary part-time work, subcontracting or "false" self-employment — has discriminatory effects, restricts freedom of association and the right to collective bargaining and, in the long term, is detrimental to the "employability" of the workers concerned.

2. The Government states that it is convinced that growth alone will not lead to a reduction in unemployment unless policies aimed at job creation and at combating inequalities in access to the labour market accompany the economic growth policies. The Government describes its Employment Action Plan, which is part of an initiative launched by the extraordinary European Council on Employment held in Luxembourg in November 1997. The Government is committed to seeking, in coordination with its European partners, to a reduction in fiscal pressures and to pursuing reforms aimed at boosting demand and maintaining the purchasing power of households, while bringing public expenditure under control. The emphasis is on stimulating technological innovation, the development of small and medium-sized enterprises, and encouraging the emergence of new forms of activity, especially in the service sector. Furthermore, the adoption of Act No. 98-461 of 13 June 1998 to guide and promote the reduction of working time should encourage the creation of new jobs, as well as reducing the social charges levied on low wages.

3. The CGT considers that the Government has correctly made combating unemployment the priority of its social policy. However, it emphasizes the negative attitude of employers towards the reduction of working hours, as illustrated by recent negotiations in the metal industry, the sole result of which was to allow more overtime without any jobs being created. The CGT also states that it totally disagrees with the idea that it is the excessive labour costs of the least skilled workers that is the principal cause of unemployment: the reductions in social charges on low salaries that have been introduced since 1993 have been very expensive and had little effect, and the trend towards lower wages could eventually affect consumption, growth and employment. The Committee notes that, according to the CGT, there have hitherto been no real consultations with the unions on this issue. Recalling that under *Article 2 of the Convention*, employment policy measures must be decided on and kept under review within the framework of a coordinated economic and social policy, the Committee requests the Government to indicate whether consultations with employers' and workers' representatives have taken place on this issue, in accordance with *Article 3*.

4. The Committee notes the information concerning active labour market policy measures to prevent long-term unemployment by systematically offering a "fresh start" in the form of personalized follow-up or training. It also notes the information concerning the implementation of Act No. 97-740 of 16 October 1997 respecting the development of activities for the employment of young people. Noting that the fixed-term employment contracts concluded under this Act are of 60 months' duration, the Committee requests the Government to describe the measures taken or contemplated to ensure the long-term

integration of the beneficiaries into employment after the end of their contract. More generally, the Committee recalls its interest in any assessment of the effectiveness of the various active labour market policy measures undertaken by the Government, in particular with respect to the reduction in working time.

Germany (ratification: 1969)

1. The Committee notes the Government's report for the period ending May 1998 and the information that it contains on the matters raised in its previous observation. It notes that the period was marked by a substantial contraction of total employment, which declined by 1.2 per cent in 1996 and 1.3 per cent in 1997, and by a rise in the unemployment rate, which reached 11.6 per cent at the beginning of 1998. In the eastern Länder, the continuation of structural adjustment was accompanied by job losses which contributed to a rise in the unemployment rate to nearly 18 per cent. The Government considers that the continuing difficulties on the labour market are principally of a structural nature and states that it has undertaken to respond to them by implementing its programme of action for investment and employment, which is designed to encourage private economic initiative by a more conducive fiscal policy, deregulation and privatization, with a view to stimulating competition and improving the access of small and medium-sized enterprises to capital markets. In the eastern Länder, the Government and the social partners agreed in May 1997 on a "joint initiative" to moderate wage demands and promote investment. The Government regrets in this respect that the representatives of the trade unions ended their participation in the initiative in May 1998. The Committee notes the Government's confidence as to the expected effects on employment of measures principally designed to promote supply in a context in which internal demand remains low. It requests it to continue providing detailed information on the manner in which overall and sectoral economic policy measures to promote employment are decided on and kept under review in consultation with the representatives of employers and workers, in accordance with *Articles 2 and 3 of the Convention*.

2. The Committee notes that structural reforms have also been undertaken during the period in the functioning of the labour market to make the regulations applicable to dismissals more flexible, promote greater flexibility in working hours and introduce stricter conditions for entitlement to unemployment benefit. It requests the Government to provide any evaluation that is available of the impact of these various labour market reform measures on the employment situation and, more generally, on the pursuit of the objective of full, productive and freely chosen employment, as set out in the Convention.

3. The Government states that the reduction in the number of beneficiaries of job creation, training and retraining measures contributed to the contraction of employment in both the east and west of the country. The Committee notes in this respect the detailed description of the active labour market policy measures provided by the Government in its report on the application of Convention No. 88. It notes that, with the coming into force of the Act of 1997 reforming employment promotion and the new provisions of Book III of the Social Code, emphasis is now given to direct placement on the primary labour market through a new insertion contract for the long-term unemployed, subsidies for recruitment and training measures for reinsertion. The Committee requests the Government to provide detailed information in its next report on the number of beneficiaries of these various measures and on the results that they achieve in terms of the integration of the persons concerned into employment.

4. *Article 3.* The Government refers, in terms of the effect given to this Article, to the hearings of the representatives of organizations of employers and workers by the

parliamentary Labour and Social Affairs Commission. With reference to its previous comments, the Committee recalls that the consultations required by this provision should cover all aspects of employment policy within the meaning of the Convention, both as regards its formulation and implementation. It requests the Government to describe in its next report the manner in which such consultations are ensured.

Honduras (ratification: 1980)

1. The Committee notes the detailed report provided by the Government for the period ending June 1998. In its report, the Government provides information on the operational plan of the General Directorate of Employment for 1999, as well as detailed statistics on the situation of employment, unemployment and underemployment in the country. In September 1997, the national rate of open unemployment was 3.2 per cent, with underemployment affecting 23.4 per cent of the population. The Honduran Social Investment Fund (FHIS), defined as a mechanism for the payment of the social debt, promotes employment through the construction of productive or social infrastructure, a support programme for the informal sector and other programmes of action designed to meet the basic needs of the population. The operational plan of the National Institute of Vocational Training (INFOP) was also included in the report. The Committee would be grateful if the Government would indicate in its next report the programmes implemented by the FHIS and the INFOP to promote the creation of productive employment. The Committee is aware that the hurricane which affected the whole Honduran territory in November 1998 resulted in massive human, economic, social and environmental losses. The Committee hopes that the Government will retain the objectives of full, productive and freely chosen employment, as set out in *Article 1 of the Convention*, among its priorities for national reconstruction and that the assistance of the international community will also be directed at sustaining programmes for the creation of employment, particularly for the population most affected by the hurricane. The Committee trusts that the Government will take into account the need to comply with the provisions of the Convention when designing and implementing new employment programmes and that, in its next report, it will be able to indicate the extent to which it has been able to overcome the difficulties encountered in attaining the objectives of the Convention.

2. The Committee considers it appropriate to recall once again that, in accordance with *Article 3* of the Convention, representatives of the persons affected by the measures to be taken shall be consulted concerning employment policies, both during their formulation and their implementation. In view of the circumstances, the Committee is bound to request the Government to provide information in its next report on the manner in which consultations with the representatives of employers and workers have been ensured in practice, particularly for those sectors affected by the hurricane, including the rural sector and the informal sector.

3. Finally, the Committee hopes that the competent departments of the ILO can make a contribution to the achievement of the objectives of the Convention and that the Government will be able to indicate in its next report the action taken as a result of any activities undertaken by the ILO.

Italy (ratification: 1971)

1. The Committee takes note of the Government's report which consists entirely of a set of documents and statistics. Bearing in mind the particular difficulty of assessing the application of a Convention which requires the formulation and implementation of a policy, the Committee would be grateful if the Government would in future follow the

report form approved by the Governing Body for the provision of the necessary information.

2. The Committee notes that, in the context of a stagnation in the volume of employment, the unemployment rate has remained above 12 per cent, while the worrying features of the distribution of unemployment have been confirmed or have worsened, particularly in terms of the divide between the north (with an unemployment rate of 6.5 per cent in January 1998) and the south (22.4 per cent) and between men (9.4 per cent) and women (16.8 per cent), the situation of young people under the age of 25 (33.8 per cent) and the incidence of long-term unemployment (67.8 per cent of total unemployment).

3. In order to make up for the absence in the report of a presentation of the Government's employment policy, the Committee has referred to the national Employment Action Plan sent in April 1998 to the Council and the Commission of the European Communities. In the Action Plan, the Government sets out the successes of its economic policy, in terms of a rapid fall in the budget deficit and the containment of inflation, which it attributes to its policy of wage restraint agreed with the social partners in the Employment Pact of September 1996. The Government emphasizes that, with the adoption in April 1998 of a Medium-Term Economic and Financial Policy Programme for 1999-2001, employment measures have, for the first time, been adopted within the overall context of general economic and financial policies aimed at achieving high growth and combating the structural causes of unemployment, especially in the south. The Committee observes that the results obtained in re-establishing macroeconomic balances to meet the requirements of the European Pact for Stability and Growth have not so far led to an improvement in the employment situation. The Committee requests the Government to indicate the extent to which its monetary, budget and fiscal policies and wages and incomes policies, as well as the implementation of infrastructure development policies, have contributed to combating unemployment.

4. The Committee notes the Government's description of different labour market policy programmes, such as socially useful work and employment-training contracts. With reference to its previous requests, the Committee again asks the Government to provide in its next report any available assessment of the results of these programmes in terms of the effective and lasting integration of their beneficiaries in employment.

Morocco (ratification: 1979)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee took note of the Government's report which replies only partly to its previous observation. From the data published in the 1996 *Statistical Yearbook*, the Committee notes that the situation of employment and unemployment is still characterized by profound discrepancies between the urban and rural populations and the different age groups. The average rate of unemployment was 16 per cent in 1995, but reached 22.9 per cent in urban areas as against 8.5 per cent in the countryside. Unemployment particularly affects young people under 25 years old in the urban environment for whom there was an unemployment rate of 37.3 per cent in 1995. The Committee observes, moreover, that with over a third of the active population employed in agriculture, very wide annual variations in the growth rate of the economy and of employment depend largely on climatic conditions.
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> 2. The Government states that its employment strategy relies chiefly on promotion of investment. It refers particularly to the fiscal incentives provided under Basic Act No. 18-95, as well as to the measures laid down in the 1997-98 budget. In addition, it considers that the liberalization measures in external trade, particularly within the partnership agreement with the European Union, should have a positive impact on employment. Referring to its previous

requests on this subject, the Committee hopes to find in the next report more precise information on how the main lines of economic policy, particularly budgetary, monetary and trade policies, contribute effectively "as a major goal" to the promotion of full, productive and freely chosen employment. In this respect, the Committee regrets that the Government has not supplied the information requested regarding the employment objectives of the Social and Economic Organization Plan 1993-97. It requests the Government to describe the achievements of this Plan in the field of employment and to indicate the objectives of the new Plan which is being prepared. The Committee would also be grateful if the Government would supply details on the implementation of the medium-term financial strategy adopted in 1995 in consultation with the World Bank, as well as on privatization measures.

3. The Committee notes the indications on efforts made to develop vocational training. It requests the Government to specify the measures taken to ensure better adaptation of education and training policies with employment prospects in a context characterized simultaneously by the persistence of a high unemployment rate for well-qualified people and of a relatively low level of school attendance. The Government may find it useful in this context to refer to the Convention (No. 142) and Recommendation (No. 150) on human resources development, 1975. The Committee also notes the information relating to the number of beneficiaries of incentives for hiring graduates and providing assistance in setting up enterprises. It requests the Government to supply any available assessment regarding the effectiveness of these measures. Noting the progress made in extending the employment services network, the Committee requests the Government to supply statistical data on the nature and volume of its activities.

4. *Article 3 of the Convention*. The Committee notes with interest the 1995 Annual Report of the National Council for Youth and the Future supplied by the Government. With reference to its previous observations, it would be grateful if the Government would also supply the information already requested on the establishment and respective competence of the Economic and Social Council and the Advisory Council to Pursue Social Dialogue.

5. *Part V of the report form*. The Committee again requests the Government to indicate the action that has been taken or is envisaged as a result of the ILO assistance or advice received in the area of employment and training, or to indicate the factors which have prevented or delayed such action.

New Zealand (ratification: 1965)

1. With reference to its previous observation, the Committee notes the Government's full and detailed report for the period ending in May 1998, which transmits the observations made by the New Zealand Employers' Federation (NZEF) and the New Zealand Council of Trade Unions (NZCTU), as well as the Government's observations made in reply to them.

2. The Committee notes that the downturn in growth was reflected during the period under consideration by a marked slow-down in the growth of employment, which did not exceed 0.2 per cent for the year ending in March 1998 (as opposed to 3.9 per cent for the year ending in March 1996), and by a slight rise in the rate of unemployment, which rose from 6.5 per cent in March 1996 to 7.1 per cent in March 1998, while the proportion of long-term unemployment (i.e. lasting more than six months) remained stable at around 35 per cent of total unemployment. In this context, the NZCTU emphasizes the particularly high incidence of unemployment among certain groups such as the Maori, the Pacific Islands people, young people and unskilled workers. In addition, the trade union considers that an assessment of the employment situation should not focus exclusively on the number of jobs created, but should also take account of their quality, bearing in mind in particular the growth in involuntary part-time employment.

3. In its report, the Government explains that its growth and employment promotion policy is based principally on responsible fiscal management, price stability and a high level of competition in the markets. It emphasizes that, without this strategy, the significant growth in employment and the fall in unemployment recorded since the beginning of the decade would not have been possible. The NZCTU, on the other hand, considers that, far from implementing an active employment policy as required by the Convention, the Government continues to put its faith in a passive policy on the assumption that growth in employment will result from a restrictive monetary policy, fiscal austerity and micro-economic liberalization. The disregard for the development of infrastructure and skills has led to a fall in productivity and in the competitiveness of exports, while monetary policy has for too long maintained interest and exchange rates that are not conducive to employment. The Committee, which recalls that under *Article 2 of the Convention* the measures to be adopted for attaining the objective of full, productive and freely chosen employment, must be decided on and kept under review within the framework of a coordinated economic and social policy, requests the Government to continue providing the most detailed information available on the macroeconomic policies that are being applied and their actual or expected effects on employment.

4. The Committee notes the description of the various active labour market policy measures and recalls its interest in any available assessment of their effectiveness in terms of the successful placement of individuals in employment. It notes that the Government announced the introduction, as of 1 October 1998, of significant changes in its strategy for fighting unemployment, such as the provision at a "one-stop shop" of job placement and income support services to jobseekers, greater decentralization of the employment services, and the unification of the various benefits paid to unemployed persons in the form of a "community wage" which is more strictly conditional on an active search for employment or participation in "organized activities". The NZCTU considers in this respect that the obligation which can be imposed on persons receiving these benefits to participate in such activities is contrary to the objective of the Convention of promoting freely chosen employment. The Committee invites the Government to indicate the manner in which the new measures adopted with a view to achieving a better coordination of unemployment assistance with active labour market policy measures contribute to the promotion of full, productive and freely chosen employment.

5. *Article 3.* The Government states that it is consulting different sectors of society in various ways and that, within the framework of the preparatory work on the changes recently made in its employment strategy, written comments have been received from more than 200 organizations or individuals. The NZCTU indicates that it did submit a written communication, but was not given any opportunity to discuss it. During discussions of the Bill obliging beneficiaries of the "community wage" to participate in "organized activities", it was only able to present its point of view to the competent parliamentary committee. In the NZCTU's opinion, such procedures do not meet the requirement of the Convention for consultation, and reflect the Government's contempt for the social partners. The NZEF states that it does not share the concern of the NZCTU and emphasizes that macroeconomic policy is the responsibility of a democratically elected government which is responsible to the electorate. The Committee recalls that, like the Conference Committee in its conclusions in June 1993, it has for a number of years stressed the importance which it attaches to giving full effect to this fundamental provision of the Convention, by undertaking regular consultations with employers' and workers' organizations on employment policy measures, especially when those measures involve

major structural reforms. The Committee notes with regret that the gradual disappearance of tripartite dialogue on employment policies, which it has noted in previous observations, is now even more apparent. The Committee trusts that the Government will adopt the necessary provisions to ensure that consultations are held with the main recognized social partners and that it will be able to indicate real progress in this regard in its next report.

Paraguay (ratification: 1969)

The Committee notes that the Government's report has not been received. It must therefore once again take up the following points which it raised in its earlier comments:

> 1. The Committee would be grateful if the Government would specify in its next report if there have been particular difficulties in reaching the employment objectives set out in the development programme for 1994-98, and indicate to what extent these difficulties have been overcome. It would greatly appreciate information on the situation, level and trends in employment, unemployment and underemployment in the country as a whole and on the extent to which it affects particular categories of workers such as women, young people, indigenous people and rural workers, and how those workers were affected by industrial restructuring processes.
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> 2. The Committee previously noted with interest the progress made in applying *Article 3 of the Convention* which lays down that representatives of the persons affected should be consulted concerning the measures to be taken to promote the objectives of full, productive and freely chosen employment. It would be particularly useful in labour markets such as that of Paraguay if the consultations required under the Convention took place with representatives of workers from the informal and rural sectors and if their participation were envisaged in the formal consultation machinery. The Committee would be grateful if the Government would include indications on any progress made in this matter in its next report.
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> 3. The Committee asks the Government to provide information on specific developments in the activities of the National Employment Service, the Programme of Associated Young Persons Enterprises and the National Service for Vocational Promotion in order to ensure that workers who have benefited from the programmes can gain access to the labour market and find lasting employment.
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> 4. The Committee refers to the report form for *Article 2* of the Convention which requests information on the measures taken to collect and analyse statistical and other data concerning the size and distribution of the labour force, the nature and extent of unemployment and trends therein. Given that the collection and analysis of statistical data must be the basis of any employment policy measures, the Committee trusts that the Government will make every effort to obtain the employment data required for the development and implementation of an employment policy within the meaning of the Convention.
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> 5. The Committee would be grateful if the Government would include in its report comprehensive data on any employment promotion measures adopted by the Institute of Rural Welfare which would allow it to assess the manner in which the Convention is being applied in the rural sector and with regard to the indigenous peoples.
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> 6. The Committee would be grateful if the Government would also provide data on the role of the informal sector in the creation of productive and lasting employment, as well as information on the progress made in including independent and self-employed workers in the modern sector of the economy.

The Committee trusts that the Government will provide a detailed report containing the information requested above and any other information which the Government may consider useful. At the same time, the Committee takes note of the communication of the American Secretariat of the World Federation of Trade Unions (WFTU) containing the views of the Paraguay Union of Journalists on dismissals that jeopardize employment. The Office in November 1998 transmitted these observations to the Government. The

Committee hopes that the Government in its next report will provide its own comments on the questions raised by the WFTU and their impact on employment policy.

Peru (ratification: 1967)

1. The Committee notes the Government's report for the period ending September 1998. The Committee also notes the discussion in the Conference Committee in June 1998.

2. In response to the Committee's request to be provided with the results of surveys that are being undertaken in the field of employment, the Government provided statistical tables on the level of urban employment: 50.5 per cent of the population was suitably employed, while 41.8 per cent were affected by underemployment and 7.7 per cent of the urban population were unemployed (the figures cover the third quarter of 1997). The Committee notes that, according to the statement by the Government representative to the Conference Committee, the Peruvian Government attaches primary importance to full employment within overall national policy. The Committee recalls that the Convention requires the declaration and pursuit, as a major goal, of an active policy designed to promote full, productive and freely chosen employment. This policy must be decided upon and kept under review within the framework of a coordinated economic and social policy *(Articles 1 and 2 of the Convention)*. The Committee would therefore be grateful if the Government would indicate in its next report the manner in which account is taken of the effects on employment of measures designed to promote economic development or achieve economic and social objectives (investment policy; fiscal and monetary policies; trade policy; prices, incomes and wages policies). For the preparation of its report, in addition to the contribution made by the Ministry of Labour, the Government may consult other ministries concerned with economic matters in order to enable the Committee to undertake a better examination of the employment policy that is being implemented.

3. The Government's report contains detailed information on the various programmes implemented by the Ministry of Labour and Social Protection. The Committee once again notes the progress achieved by the Programme for the Promotion of Self-Employment and Micro-Enterprises (PRODAME), the objective of which is to promote the generation of productive employment through the development in the formal sector of micro- and small enterprises by reducing the cost and time required to establish such economic units. The Government provides information on the establishment of the Micro-Enterprise Bank S.A. (MIBANCO). The Committee notes that the micro- and small enterprise sector accounts for 98 per cent of the enterprises in the country, which generate 75 per cent of national productive employment and contribute 42 per cent of the gross domestic product. The Committee would therefore be grateful if the Government would continue providing information on the measures taken in the framework of PRODAME and MIBANCO to increase employment opportunities and improve conditions of work in the informal sector, and to facilitate its progressive integration into the national economy. The Government may consider it appropriate to refer to the relevant provisions of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), and the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), which may provide guidance for its action. In this respect, it would also be useful to be provided with detailed information on the situation, level and trends of employment, unemployment and underemployment, not only in urban sectors, but also in rural areas of the country.

4. The Government provides information in its report on the various programmes to train young people between 16 and 25 years of age, and on vocational training and pre-

employment work experience contracts. The Committee raised the issue in its previous comments of the employment of young persons and workers wishing to return to the labour market. The Committee recalls that it requested an evaluation of the results obtained by the measures which had been adopted or were envisaged to guarantee that the application of the Employment Promotion Act with respect to employment contracts subject to special conditions, the promotion of self-employment and special enterprises, contributes effectively to the creation of new jobs. In the context of a representation made under article 24 of the ILO Constitution, it expressed concern at the considerable extension of vocational training contracts for young people, in view of the increase in the age limit to 25 years, the extension of their duration to 36 months and the increase in the maximum level of personnel authorized per enterprise to 30 per cent. The Committee trusts that the Government will continue providing information on the results achieved by programmes to promote the employment of young people. As suggested in Paragraph 17 of Recommendation No. 169, the Committee hopes that the Government will "carefully monitor" the measures taken to ensure that they result in "beneficial effects on young people's employment" and that they are consistent with the "conditions of employment established under national law and practice". The Committee once again emphasizes that it is the responsibility of the Government to ensure that the measures adopted for the vocational training of young persons do not lose sight of their objective to insert, in an effective and lasting manner, those trained into suitable employment, and it requests the Government to describe the measures taken to this effect. Please also describe the manner in which the programmes which are implemented contribute effectively to the creation of new jobs, rather than to the redistribution of existing employment under more precarious conditions.

5. In its previous comments, the Committee referred to the fact that, as pointed out by the Governing Body, the Government has made the adjustment to the labour legislation a central component of its employment policy. The Committee notes that the Conference Committee considered that the effects of applying the employment promotion legislation should be carefully assessed with a view to making the necessary adaptations. The Committee also notes that a Government Representative stated that the modernization of industrial relations had involved the creation of a sufficiently flexible legal framework which promoted the efficient operation of the labour market and facilitated the achievement of higher levels of productivity by enterprises, thereby providing incentives for private investment and consequently for the creation of new jobs. The Committee refers to point 2 of this observation and considers it necessary in this context to recall once again that, in accordance with the Convention, the employment policy shall take due account of "the mutual relationships between employment objectives and other economic and social objectives" and that an employment policy, within the meaning of the Convention, should not have the effect of, directly or indirectly, prejudicing the rights protected by international labour standards. The Committee trusts that the Government will endeavour to ensure an equitable distribution of the social costs and benefits of its economic programme and that, in its next report, it will be in a position to provide information on the measures adopted to attenuate any negative effects on employment of the current economic reforms.

6. *Article 3.* The Conference Committee concluded by expressing the firm hope that the Government would take without delay appropriate legal and practical measures to ensure that the social partners are consulted on the measures to be taken to promote employment. In its report, the Government states that it is keeping open the possibility of participation of the social partners in respect of employment policies. Draft legislation is published in the Official Journal and a system of electronic mail has been established in

the Congress of the Republic so that any organization or association can have access to the information in question. The Committee is bound to recall that the consultations required by this important provision must be held with the representatives of the persons affected by employment policy as a whole. The Committee urges the Government to establish effective, full and concrete social dialogue as a prerequisite for the success of its employment policies. The Committee is bound to emphasize the particular importance of this provision, which requires consultations with the representatives of the persons affected by employment policy "with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies". In view of the characteristics of the economically active population in Peru, the consultations required by this provision of the Convention should also involve representatives of persons who work in the rural sector and the informal sector. The Committee once again urges the Government to give effect to this fundamental provision of the Convention, both in the formal sector and in the informal sector of the labour market.

7. The Committee notes with interest the information provided by the Government on ILO technical advisory and technical cooperation activities in the field of employment promotion. It requests the Government to continue supplying this information, and to indicate the action that has been taken or is envisaged, as a result of the ILO's assistance, to improve the application of the Convention *(Part V of the report form)*.

8. The Committee notes the communication of the American Secretariat of the World Federation of Trade Unions (WFTU), conveying the concerns of the Peruvian Federation of Telephone Workers with regard to measures related to employment and the dismissals occurring as a consequence of the privatization and restructuring of the telecommunications sector. The observations of the organizations of workers referred to above were transmitted by the Office in November 1998 to the Government. The Committee invites the Government in its next report to make its own comments on the matters raised by the WFTU and their consequences on employment policy.

Poland (ratification: 1966)

1. The Committee notes the Government's brief report. It notes with interest that the unemployment rate, which reached almost 17 per cent in 1994, fell rapidly to below 10 per cent in June 1998. Nevertheless, the Government states that it is concerned by the persistence of marked regional disparities in the context of low worker mobility, particularly high levels of unemployment among women and unskilled young people, and the level of long-term unemployment.

2. In its report, the Government indicates the main priorities of its programme to promote productive employment and combat unemployment for 1997-2000. It refers in particular to the reinforcement of the regional and rural development policy, the promotion of the competitiveness of enterprises and the speeding up of educational reforms, but provides no information on the specific measures taken or contemplated in these areas. The only detailed information relates to provisions that have been adopted to make the qualifying conditions for unemployment benefit more restrictive and to allocate a greater proportion of the available resources to financing active labour market policy measures. In this regard, the Committee hopes to find in the Government's next report the information that has already been requested on the manner in which the unemployment benefit policy contributes to achieving the objectives of the Convention. It asks the Government once again to provide comprehensive information on the results of the various active labour market policy measures, such as employment subsidies, public works, loans

to support self-employment and training programmes for the unemployed. The Committe also invites the Government to describe the measures taken to reinforce the network c employment services and improve their effectiveness.

3. The Committee recalls that, under *Article 2 of the Convention*, the measures t be adopted to promote full, productive and freely chosen employment must be adopte "within the framework of a coordinated economic and social policy". The Committe would be grateful if the Government would indicate the main thrust of, for example, i monetary, fiscal and exchange rate policies, trade policy, and prices and incomes an wages policies, and indicate how they contribute to the promotion of employment. Th Committee also asks the Government to provide full information on the manner in whic consultations are carried out, in accordance with *Article 3* of the Convention, and t indicate the role of the Higher Employment Council in this respect.

4. The Committee refers to its earlier observations made in the context of th follow-up to the conclusions and recommendations of the committee set up to examine th representation alleging non-compliance with the Convention, which were approved by th Governing Body at its 265th Session in March 1996 (document GB.265/12/5). Th Committee trusts that the Government's next report will contain all the informatio necessary to assess the manner in which the Convention is applied.

Spain (ratification: 1970)

1. The Committee notes with interest the full and detailed report provided by th Government for the period ending June 1998. The Committee notes that the recovery i employment growth which it noted in its previous observation has been maintained for th period in question with the result that unemployment rates are continuing their downwar trend and should, according to the OECD, fall below 20 per cent in 1998, compared t 23.2 per cent in 1995. The labour market trends described by the Government sho encouraging developments, such as the continued increase in the number of worker offered contracts of employment without limit of time; however, other aspects o unemployment continue to give cause for concern, in particular the situation of women whose unemployment rate is double that of men, of unemployed persons under the age o 30, who account for more than half the total number of the unemployed, the persistentl very high rate of long-term unemployment and the high concentration of unemploymen in certain regions.

2. The Committee notes the important labour market reforms decided on the basi of the Employment Stability Agreement concluded in April 1997 between employers' an workers' organizations. The Committee notes in particular that in order to reduce th number of fixed-term employment contracts, a new type of contract without limit of tim combined with a reduction in the level of compensation to be paid in the event o unjustified dismissal, has been introduced for a four-year period for workers unde temporary contracts and groups of the population who are experiencing particula difficulties, such as young persons, women, the long-term unemployed and workers ove the age of 45. The regulations applicable to insertion and training contracts for youn persons have been changed in order to provide better safeguards to the beneficiaries o these contracts. The Committee notes that these measures have been decided followin dialogue with the social partners and on the basis of a critical evaluation of the result obtained from the previous measures, and it requests the Government to provide detaile information on the application of these new provisions and their impact in terms of th effective and lasting integration of those concerned into employment.

3. In response to the Committee's request on the manner in which the employment policy falls "within the framework of a coordinated economic and social policy" *(Article 2 of the Convention)*, the Government emphasizes that creating employment is the central objective of its general economic policy and the various sectoral policies which it is implementing in accordance with the guidelines issued by the extraordinary European Council on Employment, held in Luxembourg in 1997. The Government states that its commitment to the European Union project for economic and monetary union has enabled it to re-establish the necessary balance for the creation of employment. In addition to its policy to reduce inflation, interest rates and the budget deficit and to deregulate markets, the Government describes a series of sectoral measures to promote the competitiveness of the economy. With reference to the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), the Government indicates that measures to facilitate financing and investment in these enterprises are an integral part of its employment policy. The Government also describes the manner in which the new national occupational training programme, established under the tripartite agreements of December 1996, ensures greater harmonization of initial and further training with prospective employment opportunities, in particular by establishing a national system of qualifications.

4. The Committee hopes that, in the macroeconomic context described by the Government and as a result of the reforms that it is implementing in consultation with the social partners, the Government will be in a position to provide information in its next report on a continued improvement in the employment situation and a significant reduction in the unemployment rate, which remains very high.

Tunisia (ratification: 1966)

The Committee notes that the Government's report contains no reply to its previous comments. It must therefore repeat its previous observation which read as follows:

> 1. The Committee took note of the Government's report for 1996 and the information it contains in reply to its previous observation. It regrets, however, that the report does not contain statistical data allowing appreciation of the situation and trends in the active population, employment, underemployment and unemployment. The Committee requests the Government to supply any data or estimates available on this subject in its next report, indicating how they are updated in the intervals separating national surveys on population and employment. Recalling that the VIIIth Economic and Social Development Plan envisaged achieving a reduction of unemployment rate to 13 per cent in 1996, it requests the Government to indicate the type of difficulties encountered in achieving this objective, indicating to what extent they have been overcome. The Committee would be grateful if the Government would describe the growth and employment objectives of the IXth Plan (1997-2001) and supply the relevant extracts.
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> 2. In its report, the Government provides information which relates mostly to the reforms completed or in progress in order to strengthen the initial and further vocational training system and to adapt it to the new requirements of the economy. The Committee recalls its interest in information on other aspects of economic and social policy having an impact on employment. It requests the Government to indicate in its next report how the measures taken in fields such as investment policy, budgetary and monetary policies and price, incomes and wages policies contribute to promoting full, productive and freely chosen employment. In addition, the Committee again asks the Government to indicate the measures that have been taken or are envisaged to ensure that the implementation of the recent association agreement concluded with the European Community has a beneficial impact on the employment situation.
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> 3. The Committee notes the indications on the number of beneficiaries of measures for the integration of young people into the labour market and the implementation of the

integrated programme of support for the creation of employment in backward regions. It would be grateful if the Government would continue to provide information, as detailed as possible, on the implementation of the various labour market policy measures, and supply any available evaluation of their results in terms of effective and lasting integration in employment of those concerned.

4. *Article 3 of the Convention.* The Government indicates that the National Council for Vocational Training and Employment, in which representatives of employers' and workers' organizations participate, contributes to the formulation of development plans for employment and vocational training. It adds that the Economic and Social Council is consulted on the General National Economic and Social Development Plan and will examine the draft legislative texts relating to employment. The Committee recalls that under this important provision of the Convention, representatives of all the sectors concerned must be consulted on employment policies, in both formulating and implementing the policies. It requests the Government to supply examples of recent consultations in the bodies it mentions, specifying the opinions received and how they were taken into account.

Uruguay (ratification: 1977)

1. The Committee notes the Government's report for the period ending June 1998. It notes the adoption of Act No. 16783 of 16 September 1997 setting requirements and offering incentives to enterprises to recruit young persons under certain forms of contracts; and of Act No. 16906 of 7 January 1998 on investment. The Committee would be grateful if the Government would provide information on the impact on the labour market of the measures adopted under the above Acts. In particular, the Government is requested to indicate the manner in which the contracts concluded under Act No. 16783 have contributed to the young persons concerned finding lasting employment and remaining in the labour market.

2. The Committee notes that the unemployment rate rose from an average of 9 per cent in 1992 to over 11 per cent in 1996. The informal sector has grown in recent years and in 1993 represented 11 per cent of GNP. The Committee invites the Government to continue to provide the most detailed information available on the nature, extent and trends of employment, unemployment and underemployment, as requested in the report form under Article 1 of the Convention.

3. The Committee also notes that, in the context of the Labour Observatory of the National Directorate of Employment, several studies and investigations have been conducted to gather and analyse information on the real situation in important sectors of the national economy. The Committee would be grateful if the Government would indicate the extent to which it has been possible to use these studies to evaluate the effects on employment of economic and social policy measures. Please also specify the employment objectives set out in development plans and programmes and describe the manner in which it is ensured that their effects on employment are taken into consideration when adopting macroeconomic measures (*Article 2*).

4. The Committee notes the programmes implemented by the National Directorate of Employment (DNE) in collaboration with the National Employment Board (JNE) for various groups encountering problems related to employment and vocational training. The Committee notes that certain programmes are implemented with the support of the representative organizations of employers and workers. The Committee would be grateful if the Government would include an evaluation in its next report of the results achieved by these programmes in terms of the attainment of lasting employment and labour market integration.

5. *Article 3.* In reply to its previous comments concerning consultations with the representatives of the informal and rural sectors, the Government states that a training programme has been undertaken for rural workers with their support and participation. The Committee recalls that the consultations required by this Article concern employment policy measures. These consultations must have the objective of determining the experience and views of the representatives of employers' and workers' organizations and securing their full cooperation in formulating and enlisting support for such policies. The Committee notes the Government's statement on the important role of the National Employment Board in the formulation of active employment and vocational training policies and in the implementation of targeted programmes. The Committee trusts that the Government will indicate the subjects covered by the consultations held in the context of the above body and the manner in which account is taken of the views of the representatives of the rural and informal sectors in formulating employment policy, within the meaning of the Convention.

Venezuela (ratification: 1982)

1. The Committee notes the Government's report for the period ending June 1998. According to the information provided by the Government in its report, the number of persons in employment increased by approximately 60,000 between the second half of 1996 and the second half of 1997, resulting in a reduction in the open unemployment rate of 1.8 per cent. The Committee notes that the open unemployment rate was 13 per cent at the end of 1997 and the beginning of 1998, with much higher rates for young people, women and certain sectors, such as construction (according to the data supplied by the ILO's Andean Multidisciplinary Advisory Team). Of every ten new jobs created between 1990 and 1996, seven were in an activity of an informal nature, two were in the private formal sector and one in the public sector. As a consequence, the Committee would be grateful if the Government would describe in its report the relationships which have been established between employment policy objectives and other economic and social objectives, taking into account the requirement set out in the Convention that employment policy measures shall be decided on and kept under review "within the framework of a coordinated economic and social policy" *(Articles 1 and 2)*. In particular, it would be grateful if the Government would describe the manner in which the programmes referred to in its report (PROINSOL and PROMUEBA), the process of the opening up of the oil sector and the reform of labour legislation have affected the creation of productive and sustainable jobs. Please also indicate the action taken as a result of the technical advice and assistance received from the Office in the field of employment policy *(Part V of the report form)*.

2. The Government emphasizes in its report the adoption of the Tripartite Agreement on Integrated Social Security and Wages Policy of March 1997 and the Tripartite Agreement on Stability in Employment (ATES) of July the same year. A tripartite technical commission was entrusted with the formulation of an agreed employment policy and submitted its report in December 1997. The Committee notes with interest this initiative, which is in the spirit of *Article 3 of the Convention* — to secure the full cooperation of the representatives of employers and workers in formulating and enlisting support for the employment policy. The Committee trusts that the Government will indicate any progress which is achieved in putting into practice the agreed employment policy, which is endorsed by the social partners.

3. In this respect, the Committee notes the recommendations of the tripartite committee set up by the Governing Body to examine the representation made under article

24 of the ILO Constitution by the Latin American Central of Workers (CLAT) and th Latin American Federation of Trade Workers (FETRALCOS) alleging non-observanc by Venezuela of Convention No. 122 (document GB.273/14/5, adopted in Novembe 1998). The Committee notes that the above committee expressed the opinion that it woul be in conformity with the measures required by the Convention for the Government t take advantage of the effort made by the workers in the informal sector to organiz themselves to seek, through dialogue, in the spirit of *Article 3* of the Convention, solution to the employment problems arising from the existence of a very substantial informa sector. The Committee fully endorses the recommendation of the above committee an requests the Government to include full and detailed information in its report on th employment policy measures adopted for the informal sector, as well as the manner i which the representatives of the persons affected in this sector are consulted.

Zambia (ratification: 1979)

The Committee notes that the Government's report contains no reply to previou comments. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the Government's report for the period ending in June 1996 and the discussion that took place in the Conference Committee at its June 1995 Session. I notes that, in its explanations to the Conference Committee and in its report, the Governmen states that it is endeavouring to promote job creation by establishing an environment conduciv to local and foreign investment and that, since 1991, measures have therefore been taken t liberalize trade, deregulate markets, strengthen the financial sector and privatize stat enterprises. The Government considers, however, that the effects of this structural adjustmen programme will begin to show only in the coming years and that, for the time being, th programme's impact on employment and living standards is negative. The statistics provide by the Government show that employment in the formal sector declined during the period i question, owing largely to the reduction in public sector employment. The informal sector, on the other hand, has grown, having absorbed part of the increase in the active population, and now accounts for almost 85 per cent of total employment.
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> In this context, the Committee notes, from the World Bank's report on Zambi published in August 1996, the hardship that the structural adjustment programme has create for workers in the informal sector, leading to a deterioration in the potential of huma resources. In view of the objective of full, productive and freely chosen employment describe in *Article 1 of the Convention*, which the Government fully acknowledges, and of the need fo an adequate information base, in order to determine and implement such measures as may b appropriate under national conditions (see under *Article 2* in the report form adopted by th Governing Body), the Committee asks the Government to continue to provide availabl statistical data on the situation and trends in employment. The Committee would be gratefu for information on any progress, in particular with ILO technical assistance, in establishing a labour market information system.
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> 2. The Government refers in general terms to measures to soften the negative impact of structural adjustment on the most affected groups of the population and to assist and counse retrenched workers. With reference to its previous observation, the Committee notes the absence of more precise information on the exact nature and scope of social measures taken to accompany the structural adjustment policy The Government sets out briefly the objectives of the Investment Act, 1991 and the Privatization Act, 1992. The Committee notes that studies have been commissioned to assess the impact of privatization on employment, and asks th Government to provide the conclusions of these studies as soon as they are available. It trusts that the Government will keep in close contact with the ILO in order to conclude these studies and consider what measures are needed in the light of the objectives of the Convention.
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> 3. The Committee expressed concern in its previous observation at the difficulties apparently encountered in devising and applying an employment policy within the meaning of the Convention. It trusts that, perhaps in cooperation with the competent units of the ILO,

the Government will in its next report be able to provide the information required by the report form on the measures adopted within the framework of a coordinated economic and social policy in order to promote, as a major goal, a policy in keeping with *Article 1* of the Convention. In addition, it asks the Government to provide detailed information on consultations held in practice with representatives of the persons affected concerning employment policies implemented, indicating the views of those consulted and the manner in which they were taken into account in accordance with *Article 3*. The Committee recalls, as did the Conference Committee, that representatives of workers in the rural and informal sectors should be associated in such consultations.

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In addition, requests regarding certain points are being addressed directly to the following States: *Barbados, Belarus, Bosnia Herzegovina, Cambodia, Cameroon, Comoros, Croatia, Cyprus, Djibouti, El Salvador, Guatemala, Guinea, Islamic Republic of Iran, Kyrgyzstan, Libyan Arab Jamahiriya, Madagascar, Mauritania, Mongolia, Panama, Philippines, Senegal, Slovenia, Sudan, Tajikistan, Thailand, Uganda, Ukraine.*

Convention No. 123: Minimum Age (Underground Work), 1965

Rwanda (ratification: 1970)

1. The Committee notes the draft Labour Code, a copy of which was provided by the Government with its report. It also notes that, in conformity with *Article 4, paragraph 1, of the Convention*, the draft Code provides for appropriate penalties to ensure the effective enforcement of the minimum age established. However, the Committee notes that the provisions of the draft Code do not adequately ensure application of the Convention with regard to the following points.

Article 2 of the Convention. The Committee notes that no progress has been made in the draft Labour Code from the point of view of the minimum age for underground work. Recalling that the minimum age of 18 years was specified at the time of ratification, the Committee notes that section 156 of this draft Code is similar to the provision contained in section 124 of the Labour Code currently in force in providing for the prohibition of the employment of minors in certain areas of work and certain undertakings to be specified by the Minister of Labour. Since there is no Ministerial Decree prohibiting underground work by minors below the age of 18 years, this provision would not give effect to the Convention in respect of the minimum age required.

Furthermore, section 157(3) of the draft Code makes it unlawful for workers below the age of 16 years to be employed in night work, or in work that is unhealthy, arduous, harmful or dangerous to their health and training. The list of such work is to be established by decree of the Minister of Labour following consultations with the National Labour Commission for the private sector. Even if underground work is included on this list, the minimum age of 16 years is not sufficient, since the Government declared the minimum age for the application of this Convention to be 18 years. The Committee therefore requests the Government to take the necessary measures to ensure that the minimum age of 18 years for admission to employment or work underground in mines or quarries is enforced.

Article 4, paragraphs 4 and 5. The Committee notes that section 227(2) of the draft Labour Code, like section 168 of the present Labour Code and section 5(a) and (b) of Presidential Order No. 111/09 of 17 April 1978, stipulates that the employer is required to keep an "employer's record", the model for which is to be determined by order of the

Minister of Labour. The Committee recalls that under the terms of the Convention, employers are required to keep and make available to inspectors records of person who are employed or work underground and are less than two years older than the specified minimum age, which in the case of Rwanda means persons below the age of 20 years. These records must indicate the dates of birth of the persons concerned and the dates on which they were employed or worked underground in the undertaking for the first time. These details should be included in the model record adopted by Ministerial Order.

Given that these points have been raised by the Committee since the ratification of the Convention by Rwanda in June 1970, the Committee hopes that the necessary measures will be adopted quickly, taking into account the foregoing comments.

2. The Committee requests the Government to provide information on the practical application of the Convention, including extracts from inspection reports and information on the number and nature of contraventions found, in accordance with *point IV of the report form*.

* * *

In addition, a request regarding certain points is being addressed directly to the *Czech Republic*.

Convention No. 125: Fishermen's Competency Certificates, 1966

Sierra Leone (ratification: 1967)

The Committee notes with regret that once again the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In earlier comments the Committee noted that there exist no laws or regulations to give effect to the Convention. The Committee recalled the Government's earlier statement that the fishing industry is carried out mostly by vessels of less than 25 GRT not covered by the Convention and its indication that in so far as there may be larger vessels to which the Convention applies, efforts were being made to obtain information from the responsible authorities. The Committee also recalled that under section 57(n) of the Fisheries Management and Development Bill, the Minister would have the power to prescribe qualifications for manning of fishing vessels and thus to draft regulations to apply the Convention. The Committee notes the information provided by the Government in its latest report that it has formulated new regulations for the fishing industry which would incorporate the Committee's comments. The Committee hopes that the Government will provide information on the measures adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Trinidad and Tobago (ratification: 1972)

Further to its earlier comments, the Committee notes again that no legislation has yet been adopted to give full effect to Parts II, III and IV of the Convention. The Committee hopes that the Government will soon be in a position to indicate the measures taken to ensure that national legislation and practice are consistent with its commitments made by ratifying the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Djibouti, Panama, Senegal*.

Convention No. 126: Accommodation of Crews (Fishermen), 1966

Requests regarding certain points are being addressed directly to the following States: *Brazil, Djibouti, Germany, Russian Federation, Sierra Leone*.

Convention No. 127: Maximum Weight, 1967

Chile (ratification: 1972)

The Committee notes the information provided by the Government in its report and also the information provided in response to the Committee's previous comments.

1. *Article 3 of the Convention.* The Government states that the Committee's comments have been submitted to a special committee which is examining the general regulations of the Labour Code Bill. It also states that the social security directorate, through its medical department, proposes to fix the maximum load at 50 kg, whereas the Chilean Security Association, which is one of the employers' insurance companies providing social assistance in the event of industrial accidents or sickness, has proposed that this load is fixed at 55 kg. The occupational health department of the Ministry of Health, which the Government had consulted, considers that the legal provisions which are in force are insufficient to ensure the application of the measures provided for by this Article of the Convention. Consequently, the Ministry of Health will discuss this question when it examines the draft regulation drawn up by the Ministry of Health to amend Supreme Decree No. 745 of 1993 respecting the essential occupational health and safety conditions, which should enable the insertion of the provisions concerning the ergonomic risks to which workers are exposed.

The Committee trusts that these measures will shortly be adopted to clarify this situation in law and that the Government will provide full information in respect of the measures adopted in this regard.

2. In addition, the Committee notes that the report does not contain new information in response to the questions raised and recalls that its previous comments referred to the following points:

> *Article 6.* The Committee had noted that section 8 of Circular No. 30 provides that mechanical devices shall be used for the transport of loads weighing over 55 kg. While this represents an improvement over the previous weight limit of 80 kg required for the use of such devices, the Committee points out that *Article 6 of the Convention* requires suitable technical devices to be used as much as possible, and not only for loads over the 55 kg weight limit. The Committee had requested the Government to indicate the measures taken or envisaged in order to give full effect to this provision of the Convention.
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> *Article 7, paragraph 1.* The Committee had noted that Circular No. 30 does not provide that the assignment of women and young workers to the manual transport of loads other than light loads shall be limited. The Committee had expressed the hope that the Government would take the necessary measures to ensure full compliance with this provision of the Convention.

Article 7, paragraph 2. The Committee had noted that section 4 of Circular No. 30 prescribes that the maximum weight of loads for women and young workers shall be substantially less than that permitted for men, without however specifying maximum limits. It had requested the Government to indicate whether weight limits have been prescribed or envisaged in this regard.

The Committee reiterates its hope that the Government will make every effort to adopt the necessary measures in the near future.

Tunisia (ratification: 1970)

The Committee notes the information supplied by the Government in its latest report.

Article 3 of the Convention. The Committee notes the information provided by the Government in reply to its previous comments to the effect that the results of the work of the commission responsible for reviewing the Order of 5 May 1988, determining the maximum permissible weight to be carried by a single worker, will be transmitted to the Office once it has finished its work. The Committee hopes that the above commission, which was set up already in 1995, will be able to conclude its work in the near future and that the Government will provide detailed information on its activities and on the manner in which the most representative organizations of employers and workers have been consulted on this matter, as well as on the measures which have been taken or are envisaged to lower the maximum admissible weight of loads which may be carried by a single worker, which is currently set at 100 kg, a weight which considerably exceeds the recommended maximum of 55 kg.

The Committee hopes that the Government will make every effort to take the necessary measures to give effect to the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Hungary, Tunisia.*

Convention No. 128: Invalidity, Old-Age and Survivors' Benefits, 1967

Bolivia (ratification: 1977)

1. In its previous comments, the Committee noted the adoption of Act No. 1732 of 1996 establishing a new pension scheme. It also noted the observations made by the Bolivian Central of Workers and the National Confederation of Pensioners of Bolivia. Consequently, the Committee had hoped that the Government would communicate a detailed report allowing it to assess whether the new legislation continued to ensure the application of the Convention. In this regard, the Committee notes with regret that the Government's report consists only of the text of the above Act No. 1732, which replaced the old pension system based on share-out and administered by the Bolivian Institute of Social Security with a system based on individual capitalization of the insured person's assets and managed by private bodies.

Given the fundamental changes introduced into the pension scheme by Act No. 1732 of 1996 and its Regulations (Supreme Decree No. 2469 of 1997), the Committee must urge the Government once again to supply a detailed report containing, for each Article of the Convention, all the information requested by the report form adopted by the

Governing Body, including statistics on coverage and the amount of invalidity, old-age and survivors' benefits.

The Committee also wishes to draw the Government's attention to the following specific points.

Level of benefits. The Committee recalls that the Convention provides for a minimum level for invalidity, old-age and survivors' benefits. For a standard beneficiary, invalidity benefits should be 50 per cent of the reference salary after a qualifying period of 15 years of contribution. In the case of old-age benefits, the amount should be 45 per cent of the reference salary after 30 years of contribution, and 45 per cent after 15 years of contribution in the case of survivors' benefits. That level of benefits must be maintained throughout the duration of contingency, or until such time as the invalidity benefit is replaced by old-age benefit, irrespective of the amount accumulated in the individual account of the insured person, and irrespective of the type of pension chosen (life annuity contract or variable monthly annuity contract), in accordance with *Articles 10, 11, 17, 18, 23 and 24 of the Convention, read in conjunction with Part V* of that instrument concerning the calculation of periodical payments.

Adjustment of pensions. The Committee recalls that, under *Article 29* of the Convention, invalidity, old-age and survivors' benefits currently payable must be reviewed periodically following substantial changes in the general level of earnings or substantial changes in the cost of living.

Responsibility for providing benefits and administering the system. Under *Article 35* of the Convention, the State must accept general responsibility for the due provision of benefits and must take all measures required for that purpose.

In addition, *Article 36* of the Convention provides that representatives of persons protected shall participate in the administration of the pension system.

2. The Committee also hopes that the Government will provide information in its next report on any interim measures taken with regard to persons who were members of the old pension system administered by the Bolivian Social Security Institute. Please also indicate the measures taken to ensure, in accordance with *Article 29* of the Convention, the review of invalidity, old-age and survivors' pensions paid under the old share-out system, including information on statistics requested in the report form under this Article of the Convention.

[The Government is asked to report in detail in 1999.]

Libyan Arab Jamahiriya (ratification: 1975)

The Committee notes with regret that the Government's report has not been received for the third consecutive time. It recalls that the Government's previous report did not contain the information which has been requested on several occasions on the manner in which effect is given to *Part V, Article 29 of the Convention (review of cash benefits currently payable)*, which provides that the rates of cash benefits currently payable pursuant to *Article 10 (invalidity benefit), Article 17 (old-age benefit)* and *Article 23 (survivors' benefit)* shall be reviewed following substantial changes in the general level of earnings or substantial changes in the cost of living. In this respect, the Committee recalls its general observations made in 1989 with respect to Conventions Nos. 102 and 128, in which it considered, in particular, that, given the effects of inflation on the general level of earnings and increases in the cost of living, the revision of the level of long-term benefits should receive the Government's particular attention. The Committee therefore once again requests the Government to make every effort to ensure the application of

Article 29 and to supply the statistics called for under this Article of the Convention in report form adopted by the Governing Body.

The Committee hopes that the Government's next report will also contain a deta reply to the questions which it has been raising for many years and which it is recal in a request addressed directly to the Government.

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In addition, requests regarding certain points are being addressed directly to following States: *Libyan Arab Jamahiriya, Slovakia.*

Convention No. 129: Labour Inspection (Agriculture), 1969

Portugal (ratification: 1983)

The Committee notes the Government's report. It also notes the communicatio the annual inspection reports for 1996 and 1997, as well as the observations made by General Confederation of Portuguese Workers (CGTP), which were transmitted by Government with its report.

Article 15 of the Convention. According to the CGTP, the labour inspection sys does not have at its disposal the necessary human and material resources for the effec discharge of inspection activities. In view of the insufficient number of vehicles availa to the General Inspectorate of Labour (IGT), it states that inspectors can only travel public transport using the travel vouchers provided, in accordance with section 41 Legislative Decree No. 219/93 of 16 June 1993, by the Institute for the Development Inspection of Working Conditions (IDICT), which leads to them focusing their activi on urban areas and neglecting rural areas in which agricultural activities are carried The Committee considers that such provisions are an obstacle to the correct applicat of the Convention, of which *Article 15* requires that the necessary arrangements be m to furnish labour inspectors in agriculture with the transport facilities necessary for performance of their duties in cases where suitable public facilities do not exist *(paragr 1(b))*, and the reimbursement to labour inspectors in agriculture of any travelling incidental expenses which may be necessary for the performance of their du *(paragraph 2)*. The Committee therefore requests the Government to take these measu and to supply information in its next report on the progress achieved in this respect, w particular reference to the geographical distribution of the number of vehicles furnis to labour inspectors in agriculture and the measures which have been taken or envisaged to ensure that labour inspectors in agriculture are reimbursed any expen covered by this provision of the Convention.

Article 17. In reply to the Committee's previous comments under this provisi the Government states that Legislative Decree No. 441/91 of 14 November 1 establishes the principles for the extension to the agriculture sector of occupational saf and health standards and that a Legislative Decree of 1 February 1994 issued under sect 23 of the above text determines the organization and activities of the services responsi for these areas. The Government states that these provisions apply to agriculture and th subject to authorization, the employer may exercise these activities if he has the necess training. It also states that, in the field of occupational health, prevention and supervis are the responsibility of the institutions and services responsible for public health. T Government also states that there is no provision, as there is in the industrial sect providing for the approval of agricultural and similar installations, but that with regard the approval of agro-industry enterprises, the general labour inspectorate participates in the approval procedure alongside the technicians of the Ministry of Agriculture and is therefore associated with preventive control procedures. The Committee would appreciate if the Government would provide information on the cases and conditions in which the general labour inspectorate participates in the agro-industry sector in the procedures for the approval and preventive control of new installations, new substances and new methods of handling or processing products which appear likely to constitute a threat to health or safety.

The Committee is addressing a request directly to the Government concerning the application of *Articles 18, paragraph 4; 26 and 27 of the Convention*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Burkina Faso, Finland, France, Guatemala, Hungary, Madagascar, Morocco, Portugal, Syrian Arab Republic*.

Convention No. 130: Medical Care and Sickness Benefits, 1969

Libyan Arab Jamahiriya (ratification: 1975)

With reference to the comments which it has been making for a number of years, the Committee notes with regret that the Government's report has not been received for the fifth consecutive time. It recalls that the previous information supplied by the Government contained only partial responses and did not include the statistics called for in the report form adopted by the Governing Body. Without this information it is impossible for the Committee to assess the extent to which effect is given to the provisions of the Convention and it once again raises the matter in a direct request in the hope that the Government will not fail to supply the information requested.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Costa Rica, Denmark, Libyan Arab Jamahiriya, Norway, Slovakia*.

Convention No. 131: Minimum Wage Fixing, 1970

Brazil (ratification: 1983)

In its previous comments, further to the observations made by the National Union of Labour Inspectors (SNAIT) to the effect that the Government did not comply with the obligations set out in *Article 4, paragraph 2, of the Convention* to consult the representative organizations of employers and workers on the adjustment of the minimum wage, the Committee requested the Government to indicate the consultations which were conducted prior to fixing of the minimum wage by the Provisional Resolutions, specifying the organizations of employers and workers which were consulted and the outcome of the consultations. The Committee also requested the Government to indicate the measures taken or contemplated to ensure prior and effective consultation of the organizations of employers and workers concerned in decisions relating to minimum wages, in accordance with *Article 4, paragraph 2*.

The Government reiterates the information given in its previous report to the effect that representative organizations of employers and workers are consulted and heard constantly, but that the final decision concerning the index is the responsibility of the executive authority after analysis of the impact on the public finance because of the consequences regarding unemployment benefits and allowances for needy and disabled persons. The Government also indicates that, in fixing the amount of the minimum wage it takes into account the basic needs of workers and their families. It also recalls that it consulted employers' and workers' representatives in various forums and tripartite committees.

The Committee requests the Government to indicate the employers' and workers' organizations that have been consulted in the aforementioned tripartite forums and committees.

Lastly, the Government indicates that the trade unions can negotiate a basic wage through collective bargaining or arbitration, and this basic wage constitutes a form of minimum wage payable to categories of workers represented by a trade union organization which is party to a collective agreement providing for such a basic wage. This wage is a minimum wage payable to a particular category of workers, as opposed to a general minimum wage applicable to all categories of workers.

The Committee notes this information and requests the Government to provide information in its future reports on the effectiveness of the procedures for consulting employers' and workers' organizations for fixing the minimum wage. The Committee hopes that the Government will provide, in accordance with *Article 2, paragraph 1*, of the Convention, read in conjunction with *Article 5 and point V of the report form*, general information on the application of the Convention in practice, in particular: (i) changes in the minimum wage in force; (ii) available statistics on the number and categories of workers covered by minimum wage regulations, particularly those covered by minimum wages fixed by collective agreement; and (iii) the results of inspections carried out (for example, violations observed, sanctions imposed, etc.).

Costa Rica (ratification: 1979)

The Committee notes the information communicated by the Government in response to its previous observation.

The Committee notes, with satisfaction, the Government's statement to the effect that Act No. 7679 was adopted on 17 July 1997, repealing section 146 of the Labour Code which provided for the establishment of special provisions for the normal working day with regard to certain types of work, and resulted in certain categories of workers receiving a wage which was less than the statutory minimum wage.

In light of the fact that the Government states that the courts guarantee the abolition of practices which extend the limits of the maximum working day beyond those fixed within the framework of the Constitution and enforce the respect of minimal hourly wage rates for road transport workers, fixed by Decree No. 26537-MTSS of 3 December 1997 respecting minimum wage rates, the Committee requests the Government to inform it of the measures taken to abolish the above practices and to ensure compliance with the provisions of the Convention, in particular, with the provisions concerning the minimum wage rates established. The Committee also requests the Government to continue to provide, in conformity with *Article 2, paragraph 1, in conjunction with Article 5 of the Convention and point V of the report form,* general information relative to the practical application of the Convention, including its application in such sectors as the agricultural sector, the reports of the inspection services (for example: the violations observed, sanctions imposed, etc.).

Latvia (ratification: 1993)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation concerning the following points:

> The Committee notes the information supplied in the first report of the Government and the observations made by the Free Trade Union Federation of Latvia (LBAS).
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> The Committee notes from the observations made by the LBAS that, according to trade union experts, the state-determined minimum wage is 1.7 times less than the state-determined crisis living wage and three times less than the living wage necessary for one working person.
>
> The Committee notes that the Government has not communicated its comments on these observations and requests it to do so. It asks the Government to provide comprehensive information on the results of the application of the minimum wage fixing machinery in accordance with *Article 5 of the Convention*.

The Committee trusts that the Government will make every effort to take the necessary action in the very near future.

Portugal (ratification: 1983)

1. The Committee notes the detailed information provided in the Government's report in reply to its previous comments, as well as the observations made by the General Confederation of Portuguese Workers (CGTP) concerning infringements in the application of the Convention.

2. According to the CGTP, the level of the national minimum wage can be reduced according to sector of activity (for instance, domestic service), age, occupational skills and work capacity. This reduction can reach up to 50 per cent of the minimum wage for workers with a reduced capacity to work, and up to 20 per cent for workers aged between 18 and 25 in categories considered to constitute training for qualified or highly qualified professions (apprentice, trainees, etc.). This practice, which does not take into account the fact that young people today have higher levels of qualification, is used by employers as a way of paying lower wages to young people.

3. The CGTP also observes that the criteria for the adjustment of the minimum wage, provided by the Convention, have been disregarded in favour of economic criteria. The Government and the employers have defended making only minor updates of the minimum wage, arguing that it is necessary to avoid a knock-on effect on the increase of other wages. Therefore, the minimum wage policy has become a method of controlling and restricting wages in general, and has lost its effectiveness by not keeping pace with the average wage growth (from 59.4 per cent in 1990 to 51.3 per cent in 1994) and falling in real terms vis-à-vis inflation (from −0.3 per cent in 1993 to −1.3 per cent in 1994). In addition, the CGTP quotes the Agreement on Strategic Dialogue of December 1996 which provides that: "The guaranteed minimum remuneration, taking into account its social function and also its contribution to employment promotion, shall be updated annually taking as a reference the rate of inflation of tradable goods and the productivity gains obtained in the exposed sectors of the economy, to ensure that it increases faster than the average wage." According to the CGTP, the criteria established in this Agreement (not signed by the CGTP-IN) to keep the minimum wage up to date, do not take due account of the provisions of the national Constitution or of the Convention for the following reasons: (i) it takes an economic view of the minimum wage, thus weakening its social function; (ii) inequalities are increasing; (iii) this quoted provision is incorporated in the

medium-term agreement, and, as a result, could have negative repercussions on the minimum wage level, not only in 1997 but also in 1998 and 1999.

4. The CGTP further states that the updating of the minimum wage levels to be applied in 1997 constituted a serious violation of the right to participation of trade union organizations, as provided in the Convention and in the national law. According to the CGTP, on 27 December 1996, the Government announced that the Council of Ministers had approved the minimum wage revision for 1997, the exact content of which was made known through the media, without informing or holding prior consultations with the trade union organizations. In response to trade union criticism the Government arranged a meeting with the Permanent Committee for Social Dialogue on 8 January 1997. The report of the Interministerial Working Party on the Minimum Wage was only sent the day before the meeting. This report, contrary to the usual practice, did not contain a number of possible options for debate. It simply defended the amounts decided by the Council of Ministers, and no alterations were made to the minimum wage levels already decided. This exchange constituted, according to the CGTP, nothing more than simulated consultation.

5. In reply to the CGTP's observations, the Government indicates that comments from the corresponding agencies and their replies are being awaited, and that the ILO will be duly informed as soon as these elements are received.

6. The Committee hopes that the Government's comments in reply to the above CGTP's observations will be provided in the near future.

7. A request on other matters is also being directly addressed to the Government.

[The Government is asked to report in detail in 2000.]

Spain (ratification: 1971)

1. The Committee notes the observations made by the General Union of Workers (UGT) concerning the application of the Convention in the country. Although these observations were communicated to the Government in March 1998, up to now no response or comment has been received from the Government.

2. The UGT points out in its observations, first, that the Interprofessional Minimum Wage (SMI) in Spain is fixed each year by the Government after a non-binding consultation with the social partners, which generally ends up as an information session on the Government's intention, without taking account of the trade unions' proposals. According to the UGT, the SMI directly affects the fixing of wages for a large number of workers, constitutes a point of reference for determining many basic benefits in the system of social protection (subsidies and benefits for unemployment, minimum pensions, social wages, wages guaranteed in the case of the employer's insolvency, etc.) and provides conditions of access to other benefits and rights (scholarships, officially protected housing, etc.).

3. The UGT observes that the fixing of the SMI has been constantly criticized on two main grounds, viz. (i) because its amount and periodical revisions do not comply with the national legislation or the accepted international criteria, and (ii) because it establishes a clear discrimination against workers under 18 years of age, for whom lower wages are fixed. Regarding the latter point, the UGT notes that the SMI fixed for 1998 will be applied to all workers, as the SMI for those under 18 years of age has disappeared.

4. The UGT states that the SMI has lost 2.5 points of purchasing power in the last decade, and continues to worsen further with the latest decision to fix the amount of SMI at 68,040 pesetas for 1998. The UGT recalls that section 27.1 of the Workers' Statute

makes it obligatory to fix the SMI taking account of the consumer price index, the average national productivity attained, the increase of the labour participation in the national income and the general economic conjuncture. According to the UGT, the Executive applied only the first of these criteria (consumer price index) raising the previous amount by 2.1 per cent. The UGT considers that such a decision was also an infringement of Convention No. 131.

5. The Committee recalls again that it requested, in its observation of 1997, the Government to provide information on the measures taken to ensure effective consultation with employers' and workers' organizations concerned before the fixing of the SMI, in accordance with the provision of *Article 4 of the Convention*.

6. The Committee hopes that the Government will communicate detailed information in its next report regarding the observations made by the UGT and on the outstanding questions relating to the consultation with the organizations concerned.

[The Government is asked to report in detail in 1999.]

Sri Lanka (ratification: 1975)

The Committee notes the information provided in the Government's report in reply to its previous comments, and the observation made by the Lanka Jathika Estate Workers' Union in respect of the application of the Convention in the country.

Determination of minimum wages in the plantation sector

In its previous observation, the Committee requested the Government to indicate whether the analysis of wage structure to be elaborated in the plantations sector had actually been undertaken and, if so, whether the results have been taken into consideration in the minimum wage fixing. It also asked the Government to communicate a copy of the wage board decisions fixing the minimum wages in the plantation sector.

In reply to these comments, the Government indicates that the wages in the plantation sector are determined by tripartite wage boards. The wage structures are determined on the basis of basic minimum wages with added allowances based on the cost-of-living index, in consultation with the employers' and workers' organizations concerned. The Government further states that, with the privatization of the estates in recent years, collective agreements are also used to determine wages and other conditions of work.

According to the Lanka Jathika Estate Workers' Union, a satisfactory national minimum wage fixing machinery should be established in the country, given that certain minimum wages are exceptionally low, in particular in the tobacco sector where some minimum wages are fixed since April 1972 (Rs.10.38, Rs.9.50 and Rs.8.28 for men, women and children, respectively).

The Committee requests the Government to indicate its position with respect to the Lanka Jathika Estate Workers' Union's considerations. It also asks the Government to provide information on any progress made in the development of the wage structure in the plantations sector, and to communicate a copy of the wage board decisions fixing the minimum wages in this sector, together with a copy of relevant collective agreements.

Extension of the coverage of the minimum wage fixing machinery to workers in specific sectors

The Committee wishes to refer to its previous comments concerning the coverage of the minimum wage fixing machinery of certain trades, in particular sharecroppers and similar categories of agricultural workers, fishermen and persons working under systems established by custom or tradition.

According to the Government, it is difficult to extend coverage to these categories of workers because they are not organized and their work is seasonal in nature.

The Committee, once again, recalls that *Article 1, paragraph 1, of the Convention* requires the coverage of "all groups of wage-earners whose terms of employment are such that coverage would be appropriate". It also refers to paragraphs 84 to 86 of its 1992 General Survey on minimum wages, in which it emphasized the importance of the efforts to broaden the coverage and to submit reports regarding the scope in accordance with *Article 1, paragraph 3*. The Committee hopes that the Government will be able to provide information on progress made in the application of the Convention to all groups of workers as yet unprotected and whose coverage would be appropriate under the terms of the Convention.

The Committee is also raising some other points in a request addressed directly to the Government.

Uruguay (ratification: 1977)

1. The Committee takes note of the Government's report, as well as the statement made by a Government representative to the Conference Committee on the Application of Standards in 1998 and the discussions which took place on that occasion.

Consideration of the needs of workers and their families in determining minimum wages

2. In its previous comments, the Committee requested the Government to indicate to what extent and in what manner the needs of workers and their families are taken into consideration in determining the level of minimum wages, in accordance with *Article 3 of the Convention*.

3. According to the Government, *Article 3* of the Convention is given effect by the provisions of section 1 of Act No. 10449 according to which "the minimum wage is the wage regarded as necessary, in the light of prevailing economic conditions, to ensure a standard of living for the worker sufficient to meet his physical, intellectual and moral needs". The process of fixing minimum wages, whether those established through collective bargaining or those fixed administratively, takes account of this legal provision.

4. The Committee observes that, with regard to minimum wage fixing, the Government's report cites a number of provisions of Act No. 10449 which only ensures "a standard of living *for the worker* sufficient to meet his physical, intellectual and mora needs". The Committee wishes to point out that this provision makes no reference to the needs of workers *and their families*, as required by *Article 3* of the Convention. Furthermore, the Government does not explain the specific manner in which the needs o workers and their families are taken into consideration in practice for the purpose of fixing minimum wages; for example, is the minimum wage calculated on the basis of a baske of essential goods? Is the minimum cost of education, health care and housing taken into account? The Committee strongly hopes that the Government will be able to indicate in its next report the measures taken to ensure that *the needs of workers and their families* are taken into consideration for the purpose of minimum wage fixing, as well as indicating how in practice those needs are estimated.

Lack of consultation of the employers' and workers' representatives concerned in the determination of minimum wages

5. In its previous comments, the Committee — having noted the overall persistence, over many years, of the practice of unilateral determination by the Government of the inter-occupational minimum wage and the minimum wages of rural and domestic workers — expressed the hope that the Government would soon be able to indicate the measures taken to ensure full consultation with the representative organizations of employers and workers concerned in fixing the national minimum wage and the minimum wages of rural and domestic workers, in accordance with the provisions of *Article 4, paragraph 2,* of the Convention.

6. In reply to these comments, the Government indicates that the national minimum wage is not applied in practice to determine the minimum payment for work, since it is in reality simply a reference value for the calculation of certain social security benefits. According to the Government, this was confirmed by the statement in 1997 of the Inter-Union Assembly of Workers — National Convention of Workers (PIT-CNT), that "... the minimum wage is only a political concept, devoid of substance, which serves basically to regulate a number of social security measures (including the amount of family allowances and retirement pensions)". This feature of the national minimum wage in Uruguay means, according to the Government, that "the wage should not be analysed from the viewpoint of the Convention".

7. As regards the minimum wages of rural and domestic workers, the Government points out, firstly, that the country has a complex minimum wage fixing system. On the one hand, it has a general scheme of wage councils established under Act No. 10449 and applicable to all private sector workers. On the other hand, the Executive is limiting the application of the Act in question to particular sectors (public transport, health, construction) and is promoting collective bargaining without state involvement in the other sectors. Lastly, the Executive fixes the minimum wages of rural and domestic workers by decree. The competent administrative authorities for determining the different occupational groups are the Ministry of Labour and Social Security, which has issued a Decree describing the occupations covered by each group, and the National Labour Directorate which, through the Committee for the Classification of Occupations, reclassifies and examines particular cases of new or complex occupations. Relevant Decrees have been issued after obtaining the prior agreement of the representative organizations involved. According to the Government, current national practice, which has been established for over 50 years and has been confirmed in legal terms by the ratification of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), encourages collective negotiation, without restriction, by company or branch of activity. Procedures are simplified as far as possible, and administrative requirements are set aside if they obstruct collective bargaining, which is the normal procedure for fixing wages in the country from which no sector and no category of workers is excluded. The fact that it is the Government that fixes and adjusts the minimum wages of rural and domestic workers every four months is due to the almost non-existence of representative organizations of employers and workers in these sectors which would conduct negotiations. The Government therefore considers that its role is a subsidiary one of establishing minimum wages that have to be recognized by each employer individually and which extend to social security benefits, including medical care, employment injury insurance, retirement benefits, and other benefits frequently provided for these categories of workers, such as accommodation and food. All of this corresponds to the content of *Article 3* of the

Convention. The Government recalls its statement to the Conference Committee in 19
to the effect that there is no obstacle to the development of collective bargaining
representative organizations of employers and workers are established in these sectors
fact that was confirmed by the presentation of collective agreements concluded by ru
workers in 1996-97. In conclusion, the Government states that: (i) the system for fix
and adjusting the wages of rural and domestic workers gives effect to *Article 1, paragra*
1, of the Convention in establishing a system of minimum wages applied to differ
categories of workers, depending on their conditions of employment; where the syst
is not applicable, those workers are free to negotiate with employers; (ii) at no time
the Government justified the system of fixing and adjusting the wages of rural
domestic workers by referring to agreements made in the context of the Southern C
Common Market (MERCOSUR); (iii) current wages policy, combined with ot
measures, has brought about: (a) a fall in inflation from 130 per cent annually in 1991
less than 20 per cent in 1997; (b) a fall in unemployment from 12 per cent in 1996 to
per cent in March 1997; and (c) a 3.64 per cent increase in real wages between 1993
1997.

8. The Committee, noting the Government's detailed reply, recalls that, un
Article 4, paragraph 2, of the Convention, provision must be made by the ratifying Sta
in connection with the establishment, operation and modification of wage-fix
machinery, for full consultation with the representative organizations of employers
workers concerned, *or, where no such organizations exist, representatives of employ*
and workers concerned. These provisions do not impose an obligation to negotiate, but
impose an *obligation to consult*. In the absence of representative organizations
employers and workers, the Government has an obligation to consult *representatives*
employers and workers concerned. The Committee expresses the firm hope that
Government will adopt the necessary measures in the near future to *consult representati*
of employers and workers concerned for the purpose of establishing, applying
adjusting minimum wages.

[The Government is asked to report in detail in 1999.]

* * *

In addition, requests regarding certain points are being addressed directly to
following States: *Azerbaijan, Burkina Faso, Cameroon, Cuba, Egypt, France, Guatema*
Guyana, Iraq, Japan, Kenya, Latvia, Lebanon, Lithuania, Mexico, Nicaragua, Nig
Portugal, Romania, Slovenia, Sri Lanka, Swaziland, Syrian Arab Republic, Uni
Republic of Tanzania, Zambia.

Convention No. 132: Holidays with Pay (Revised), 1970

Iraq (ratification: 1974)

1. The Committee has taken note of the Government's last report and of
information given in it in answer to its previous observation. It notes with regret that
Government once again confines itself to repeating the information provided in earl
reports. The Committee trusts that the Government will provide fuller and more detai
information in its next report on the following points on which the Committee
commented for many years.

2. With regard to the need to bring Act No. 24 of 1960 concerning the pub
service into conformity with the provisions of the Convention:

(a) Article 2, paragraphs 2 and 3, of the Convention. The Committee notes that the Government did not indicate in its first report whether it intended to avail itself of the possibility provided under paragraph 2 of the Convention of excluding public service employees from the application of the Convention. The Committee also notes that the Government has for a number of years simply stated, without providing any other information, that in the view of the competent authority (the Ministry of Finance), the Convention is not applicable to officials in the public service covered by the provisions of Act No. 24 of 1960. In this regard, the Committee recalls that the possibility of excluding from the application of the Convention limited categories of employed persons carries with it, under the terms of paragraph 3, an obligation to specify the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories. The Committee therefore requests the Government to indicate how it proposes to apply this provision of the Convention.

(b) Article 9, paragraph 1. The Committee notes that sections 43(3) and 48(3) of Act No. 24 of 1960 allow officials to accumulate up to 180 days of leave, and other public servants 100 days of leave. The Committee draws the Government's attention to the fact that, under the terms of this Article of the Convention, a part of the holiday consisting of at least two uninterrupted working weeks must be taken no later than one year, and the rest of the holiday no later than 18 months, from the end of the year in which the holiday entitlement arises.

(c) Article 11. The Committee notes that, upon termination of the employment relationship following dismissal or resignation (sections 45(1) and 49 of Act No. 24 of 1960), officials do not appear to have any paid leave entitlement proportional to their length of service or any entitlement to financial compensation. The Committee notes that the same principle applies to school employees who terminate their service during the first half of the school year (section 48(10) of Act No. 24 of 1960). The Committee wishes to recall that, under the terms of the present Article of the Convention, any employed person who has completed a minimum period of service should, on termination for any reason, receive a holiday with pay proportional to the length of service for which he or she has not received such a holiday, or compensation in lieu thereof, or the equivalent holiday credit.

3. With regard to the need to bring the leave provisions contained in the Labour Code (Act No. 71 of 1987) into conformity with the Convention:

(a) Article 6, paragraph 1. There appear to be no national laws or regulations giving effect to this provision of the Convention, under which public and customary holidays are not counted as part of the three weeks' annual holiday with pay prescribed in *Article 3, paragraph 3*. In this respect, the Government has indicated that, in the absence of a relevant provision in the Labour Code, section 150 of the Code provides that the provisions of other laws and of ratified Arab and international labour Conventions shall apply. The Committee wishes to call the Government's attention to the fact that the provisions of the Convention are not self-executing. It would therefore be better to bring national legislation explicitly into harmony with the provisions of the Convention in order to avoid any uncertainty regarding the state of the law.

(b) Article 8, paragraph 2. The Committee notes that, under the terms of article 69(2) of the Labour Code, only six continuous days of leave must be taken at one time when the leave has been divided. The Committee recalls that, under *Article 8, paragraph 2*, when the annual holiday with pay is broken into parts, one of the parts must consist of a minimum of two uninterrupted working weeks, unless otherwise provided in an agreement between the employer and the employee.

(c) Article 9, paragraph 1. The Committee notes that, in the event of the deferral of a part of the holiday under the conditions set out in section 73(3) of the Labour Code, the worker is entitled to compensation. In this respect, the Committee reiterates that this provision is not in conformity with *Article 9, paragraph 1,* of the Convention, according to which the remainder of the holiday should be granted and taken no later than 18 months from the end of the year in which the holiday entitlement arises.

4. The Committee trusts that the Government will take the necessary measures in the near future to bring all its legislation into conformity with the fundamental provisions of the Convention and asks the Government to keep the ILO informed of any relevant developments.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Cameroon, Germany, Switzerland, Yemen.*

Convention No. 133: Accommodation of Crews (Supplementary Provisions), 1970

France (ratification: 1972)

With reference to its previous comments, the Committee notes with interest that Division 215 of the Regulations appended to the Order of 23 November 1987, as amended, respecting the safety of vessels, which establishes rules for accommodation on board fishing and commercial vessels, gives effect to the provisions of the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Australia, Azerbaijan, Brazil, Côte d'Ivoire, Germany, Greece, Guinea, Lebanon, New Zealand, Russian Federation, Ukraine, Uruguay.*

Convention No. 134: Prevention of Accidents (Seafarers), 1970

Requests regarding certain points are being addressed directly to the following States: *Egypt, United Republic of Tanzania.*

Convention No. 135: Workers' Representatives, 1971

Costa Rica (ratification: 1977)

The Committee notes the information provided by the Government in response to the comments made by the Inter Confederal Committee of Costa Rica (CICC) on the application of the Convention.

The Committee recalls that the comments made by the CICC referred to: (1) the absence of a procedure prior to the dismissal of trade union leaders to investigate whether they have been given grounds for dismissal; (2) the non-enforcement of court sentences to reinstate dismissed trade union leaders; (3) the excessive delays in administrative and legal proceedings relating to acts of anti-union discrimination (the CICC refers to acts of anti-union discrimination which have occurred in various enterprises and institutions); (4)

the Government's violation of the provisions of *Articles 2 and 5 of the Convention* respecting the facilities afforded to workers' representatives and the requirement that elected representatives do not undermine the position of trade union representatives; (5) the limited number of trade union representatives who are guaranteed employment protection (one representative for the first 20 trade union members and one for each additional 25 workers thereafter up to a maximum of four).

In respect of the alleged absence of a procedure prior to the dismissal of trade union leaders to investigate whether they have been given grounds for dismissal, the Committee emphasizes that the Convention leaves open various forms of protection of workers' representatives against acts which are prejudicial to them, including dismissal, in so far as rapid and efficient protection exists in law and in practice; this protection can occur before or after dismissal. In these circumstances, the Committee notes that the Costa Rican law provides for protection following dismissal and will not consider this matter further.

In regard to the alleged delays in procedures in respect of acts of anti-union discrimination and the non-execution of decisions handed down by the courts to reinstate dismissed trade union leaders, the Committee will examine these matters, due to the general nature thereof, within the framework of the application of Convention No. 98 by Costa Rica. Similarly, with regard to the alleged violation of *Article 5* of the Convention through the requirement for elected representatives not to undermine the positions of trade union representatives, the Committee notes that the CICC refers, in particular, to an instance in the enterprise FERTICA where the management encouraged the establishment of a parallel Executive Committee to that of the existing trade union Executive Committee. In these circumstances, the Committee considers that this type of allegation is tantamount to an act of interference as covered by *Article 2* of Convention No. 98 and also will examine this matter within the framework of the application of Convention No. 98 by Costa Rica.

With regard to the Government's alleged violation of *Article 2* of the Convention respecting the facilities which must be afforded to trade union representatives, the Committee notes that the Government states that, in addition to the protection afforded in law, trade union representatives enjoy benefits under collective agreements (the Government cites examples of collective agreements which lay down special clauses providing protection against acts of anti-union discrimination, concerning the provision of documentation to the trade union organization, paid leave for trade union activities). In this respect, the Committee notes that the CICC has not provided detailed information to support its allegations of the violation of *Article 2* of the Convention and will, therefore, not proceed with its examination of this matter.

Finally, in respect of the allegation concerning the limited number of trade union representatives who are guaranteed employment protection — section 367 of the Labour Code (one delegate for the first 20 trade union members and one for each additional 25 thereafter up to a maximum of four) — the Committee notes the Government's statement to the effect that the law protects workers' representatives against any acts which may prejudice the free and efficient exercise of their activities, but that the authorities have to recognize that such workers hold a special position and that this protection cannot be extended to all workers. In this respect, the Committee notes that the number of protected trade union representatives is, in practice, limited and considers that it would be advisable to extend protection to a greater number of representatives. In these circumstances, the Committee requests the Government to consider this possibility and to inform the Committee in this respect in its next report.

Côte d'Ivoire (ratification: 1973)

The Committee notes the Government's report as well as the information provided by the Government to the Conference Committee in June 1998 and the discussion which took place thereafter.

The Committee notes with satisfaction the amendments introduced by Act No. 95-15 of 12 January 1995 to the Labour Code and the Government's statement to the effect that Act No. 92-573 and Circular No. 07585/EFP/CAB of 20 July 1993, which were the subject of comments by the Committee, are no longer in force since the revision of the Labour Code. Moreover, the new Labour Code strengthens the protection afforded to workers' representatives in providing for a fine of between 10,000 and 100,000 francs and a prison sentence of between two months and one year for anyone prejudicing the freedom to choose workers' representatives, trade union delegates or members of health, safety and working conditions committees (section 100-5). The Labour Code subjects the dismissal of a workers' representative or a trade union delegate to the prior authorization of the labour inspector (sections 61-7 and 62-3); this protection is also extended to former delegates for a period of six months following the termination of their mandate. Finally, the employer cannot pursue the termination of the contract by other means (section 61-7) since the employer is obliged to follow the procedures for the dismissal of delegates at all times.

Croatia (ratification: 1991)

The Committee notes the comments made by the Union of Autonomous Trade Unions of Croatia (UATUC) on the application of the Convention, which were received in February 1998, and the Government's observations in reply to these comments.

Article 2 of the Convention. The Committee notes the UATUC's statement that section 148 of the Industrial Relations Act of 1995 provides that where a workers' council has not been established (a body established by a trade union or at least 10 per cent of the workers in an enterprise with the objective of representing the workers before the employer) only part of its functions and rights may be exercised by a trade union delegate, namely those set out in sections 144 to 146 (the right to be informed, the right to be consulted before a decision is taken and the right to give consent to certain decisions made by the employer), section 152 (1 to 5 and 8) (conditions for carrying out its activities), and sections 154 and 155 (prohibition of the unequal treatment of workers and obligation not to disclose confidential information of the enterprise). According to the UATUC, employers therefore prefer workers' councils not to be set up.

The Government states that the above rights which are not transmitted to trade union delegates (especially the right of members of workers' councils to attend training courses paid by the employer), are rights which are already enjoyed by trade union delegates in their capacity as such and that they are covered by section 181 of the Industrial Relations Act, or they are rights which by virtue of their content are more limited than those of a trade union, or they are rights which it would not be meaningful to delegate. The Government also states that, leaving aside the fact that employers prefer not to have workers' councils, the Act provides that they can be established if trade unions or at least 10 per cent of the workers so wish, and that it does not therefore see how they can be impeded.

The Committee recalls that *Article 2* of the Convention provides that "such facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently" and that, in determining these facilities, "account shall be taken of the characteristics of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned", but that no explicit indication is given of the number or type of facilities which must be provided when workers' representation is provided through other bodies. The Committee notes that, by virtue of the Industrial Relations Act of 1995, workers' representatives (whether they are members of the workers' council or trade union delegates) benefit from protection against acts which might prejudice them and are provided with a considerable number of facilities to enable them to carry out their functions, in accordance with the provisions of the Convention.

Article 4 of the Convention. The Committee notes the UATUC's statement that, in cases where there are various trade unions in an enterprise and a workers' council has not been established, the trade unions have to agree on the trade union delegate who will exercise the functions and rights of the workers' council and, if they do not reach agreement, a referendum has to be organized under the responsibility of the trade unions. The Committee notes the Government's indication in this respect that this does not mean in any way that it is the responsibility of the employer to resolve the dispute or bear the costs of the referendum. The Committee recalls in this regard that *Article 4* of the Convention provides that "national laws or regulations, collective agreements, arbitration awards or court decisions may determine the type or types of workers' representatives which shall be entitled to the protection and facilities provided for in this Convention" and that it does not favour any specific method for the designation of representatives. Moreover, the Committee considers that the holding of a referendum in which the employer does not intervene for the purpose of deciding the trade union delegate who will exercise the facilities and rights of workers' councils is not in contradiction with the provisions of the Convention.

Gabon (ratification: 1975)

The Committee notes the communication from the Confederation of Gabonese Free Trade Unions (CGSL) dated 20 May 1998 in regard to the application of the Convention. The Committee requests the Government to provide its comments in this respect in its next report.

[The Government is asked to report in detail in 1999.]

Iraq (ratification: 1972)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes with regret that the Government's report still does not reply to the previous direct requests for more detailed information on the application of *Article 2 of the Convention*, and in particular that it does not contain copies of any agreements concluded between the workers' and the employers' organizations to which the Government had referred in its previous report and which would provide members of trade union committees with the facilities necessary for carrying out trade union functions.
>
> In these circumstances, the Committee is bound once again to draw the Government's attention to the terms of *Article 2*, under which facilities must be afforded in the enterprise to workers' representatives (such as the necessary time off to attend meetings, training courses and trade union seminars, conferences and congresses; access to workplaces when necessary; space to post trade union notices, etc., as indicated in Chapter IV of the Workers' Representatives Recommendation, 1971 (No. 143)).
>
> The Committee is bound to request the Government once again to provide with its next report the texts of any agreements concluded between trade unions and employers which

afford the above facilities to workers' representatives in enterprises, as well as any relevant information on the practical application of *Article 2*.

The Committee hopes that the Government will make every effort to tak necessary action in the very near future.

Sri Lanka (ratification: 1976)

The Committee notes the information provided by the Government in its repo

In its previous comments, the Committee had drawn the Government's attenti the importance of effective protection of workers' representatives against an prejudicial to them — including dismissal — based on their status or activities as wor representatives and to the need to adopt measures in this regard beyond the proce provided for in the Termination of Employment of Workmen (Special Provisions) 1971, which only allows the Ministry of Labour to refer individual disputes to arbitr and the Industrial Disputes Act, 1967, which only establishes appeals procedures fu to which courts may make decisions on the basis of "just and equitable" criteria. Committee notes from the Government's report that the necessary amendments t Industrial Disputes Act are under consideration by a Cabinet subcommittee in this res *The Committee trusts that these amendments to the Industrial Disputes Act will ensur effective protection of workers' representatives in accordance with Article 1 o Convention. It requests the Government to inform it of any progress made in the ado of these amendments in its next report.*

United Republic of Tanzania (ratification: 1983)

The Committee notes the Government's report. Referring to the Commit previous comments on the need to review section 4 of the OTTU Act No. 20 of which establishes the Organization of Tanzanian Trade Unions (OTTU) as the sole representative of all employees in the United Republic of Tanzania, thereby pos excluding the rights guaranteed under the Convention for other workers' and u representatives, the Government indicates that the necessary action to repeal and re the OTTU Act has been undertaken and that a draft Trade Union Act to that effec been submitted for a first reading to Parliament in June 1998. *The Committee request Government to keep it informed of developments.*

Yemen (ratification: 1976)

The Committee notes the information supplied by the Government in its repor

1. *Article 1 of the Convention.* With reference to the Committee's pre comments concerning the insufficiency of legislative provisions to ensure ade protection against acts of anti-union discrimination against workers' representatives Government indicates that the Constitution as well as certain provisions of the new La Code No. 5 of 1995 guarantees such protection. The Government further states certain provisions of the draft Trade Unions Act provides protection for wor representatives.

The Committee notes that section 35 of the new Labour Code stipulates that wor representatives on a trade union committee shall not be dismissed or otherwise discip for carrying out their trade union activities in accordance with the Code, the Trade U Act and the rules and regulations made thereunder. *The Committee therefore trusts the draft Trade Unions Act, the provisions of which would grant additional protectio workers' representatives, will be adopted shortly.*

2. *Article 2.* The Committee notes the information supplied by the Government to the effect that the draft Trade Unions Act affords various facilities to workers' representatives in order to enable them to carry out their functions promptly and efficiently: for example, section 28 of the draft Trade Unions Act provides for the right of organizations to hold meetings without prior authorization; section 32 of this draft Act grants organizations the right to participate in conferences, meetings and other gatherings relating to work and employment whether on the national, local or international levels for which they shall be entitled to receive wages and indemnities, etc.

The Committee requests the Government to provide a copy of the draft Trade Unions Act as soon as it is adopted.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Cyprus, Estonia, Lithuania*.

Convention No. 136: Benzene, 1971

Guyana (ratification: 1983)

1. The Committee notes that the Occupational Safety and Health Act, 1997, has been adopted. It notes that this Act does not contain any specific provision which regulates the use of benzene and products containing benzene as provided for in the Convention. In this respect, the Committee notes the Government's indication that, in the absence of measures giving effect to the provisions of the Convention, the Occupational Safety and Health Division of the Ministry of Labour has been requested to take legal initiative in order to bring the national legislation into conformity with the Convention. To this effect, the Committee would draw the Government's attention once again to the following points.

Article 2 of the Convention. Measures to ensure that harmless or less harmful substitute products are used instead of benzene or products containing benzene.

Article 4. Prohibition of the use of benzene or products containing benzene in certain processes.

Article 5. Occupational hygiene and technical measures to ensure effective protection of exposed workers.

Article 6, paragraph 1. Measures to prevent escape of benzene into the air or places of employment.

Article 6, paragraph 2. Determination by the competent authority of the maximum permissible concentration of benzene in the air of places of employment.

Article 6, paragraph 3. Directions issued by the competent authority for measuring benzene in the air.

Article 7, paragraph 1. Measures to ensure that, as far as practicable, processes involving the use of benzene are carried out in enclosed systems.

Article 8, paragraph 1. Measures to ensure that workers are provided with appropriate means of personal protection against the risk of absorbing benzene through the skin.

Articles 9 and 10. Measures to provide for medical examinations of workers employed in work processes involving exposure to benzene.

Article 12. Measures to ensure that containers containing benzene are clearly marked with danger symbols.

The Committee reiterates its hope that the Government will take the necessary measures and will soon be in a position to report on progress made towards the adoption of measures required under the Convention to protect workers against hazards of poisoning arising from benzene.

II. *Article 11 of the Convention.* The Committee notes that section 41, paragraph 1, of the Occupational Safety and Health Act, 1997, provides for a general prohibition to employ children in any factory or in the business of a factory outside the factory. In this respect, it would point out that *Article 11* calls for measures to prohibit the employment of young persons *under 18 years of age*, pregnant women and nursing mothers in work processes involving exposure to benzene. The Committee would therefore request the Government to indicate the measures adopted or envisaged to ensure that full effect is given to this Article of the Convention.

Italy (ratification: 1981)

1. The Committee notes the information provided by the Government in its report and the many legislative texts attached. It specifically notes with interest the adoption of Legislative Decree No. 626 of 19 September 1994 giving effect, inter alia, to European Directive No. 90/394, which ensures the application of *Articles 1, 5 and 7, paragraph 1, of the Convention*.

2. In its previous comment, the Committee noted that certain provisions of the Convention are not covered by EEC Directive No. 90/394 and therefore requested the Government to indicate the manner in which *Articles 4, 6, 9, 10 and 11* of the Convention are applied. The Committee notes in this respect that Legislative Decree No. 626 does not contain information on the application of the above detailed provisions of the Convention.

Articles 4 and 1(b). In its previous comments, the Committee noted that, by virtue of Act No. 245 of 5 March 1963 limiting the use of benzene and its homologues in work, the use of benzene and solvents containing more than 2 per cent by weight of benzene is prohibited in certain types of work. The Committee recalled that, under *Article 1(b)* of the Convention, its provisions must apply to products the benzene content of which exceeds 1 per cent by volume. The Committee notes that neither EEC Directive No. 90/394, nor Legislative Decree No. 626 of 19 September 1994, modify the application of Act No. 245 by ensuring that its measures apply to products containing more than 1 per cent by volume of benzene. The Committee wishes to emphasize that the Convention refers to products the benzene content of which exceeds 1 per cent by volume. Since comparisons between the percentage by weight and the percentage by volume vary according to the product containing benzene, it will be difficult to determine whether the Convention is strictly applied while the legislation refers to the percentage by weight. The Committee trusts that the Government will take the necessary measures as soon as possible to amend the existing legislation, and particularly Act No. 245, to ensure that the provisions adopted in application of the Convention cover benzene and all products the benzene content of which exceeds 1 per cent by volume. The Government is requested to indicate information on any progress achieved in this respect.

Article 6, paragraphs 2 and 3. In its previous comments, the Committee noted the Government's statement that, while a number of enterprises apply threshold limits for benzene exposure, no general regulation exists to ensure that workers are not exposed to concentrations of benzene vapour in the air greater than 80 mg/m^3. The Committee recalls that, in accordance with *Article 6, paragraph 2,* the competent authority shall fix a maximum level of exposure to benzene not exceeding a ceiling value of 80 mg/m^3. The Committee notes that Legislative Decree No. 626, following various amendments, has come into force and does not contain provisions on this specific point and that the Government does not appear to have adopted a directive on this subject. The Government is therefore requested to indicate in its next report the measures taken or envisaged to ensure that this exposure limit is not exceeded at the workplace and to indicate the measures taken by the competent authority to issue directives on carrying out the measurement of concentrations of benzene in the air of places of employment.

Article 9, paragraph 1. The Committee notes that section 4 of EEC Directive No. 90/394 provides for health surveillance of workers likely to be exposed to carcinogens and that Annex II of the above Directive recommends that health monitoring include, where appropriate, biological monitoring. The Committee recalls that this Article of the Convention requires a thorough pre-employment medical examination and periodic re-examinations, which shall include a blood test, for workers who are to be employed in work processes involving exposure to benzene or products containing benzene. The Committee requests the Government to indicate the measures which have been taken to ensure that workers are subject to pre-employment examinations and periodic re-examinations which include a blood test.

Article 9, paragraph 2. In its previous comments, the Committee noted that section 35 of Presidential Decree No. 303/1956 respecting the protection of workers against exposure to toxic substances, empowers the competent authority to exempt certain workers from medical examinations where the risk of exposure to benzene is negligible. In its report for the period ending 30 June 1985, the Government stated that these exemptions would be systematically regulated in the draft legislation on benzene that was envisaged at the time . In its report for the period ending 30 June 1990, the Government stated that the issue of exemptions from medical examinations would be resolved by the adoption of the relevant EEC directives and that national regulations would be established after consultation with the most representative organizations of employers and workers concerned. However, the Committee notes that the Government has adopted Decree No. 626, which gives effect to the Directive, and which does not contain provisions which are in conformity with the requirement of *Article 9, paragraph 2,* of the Convention, which provides that exceptions from medical examinations may be permitted in respect of specified categories of workers after consultation with the most representative organizations of employers and workers concerned. Since the exemptions provided for in Presidential Decree No. 303/1956 do not guarantee such consultations, but are granted on a case-by-case basis by the competent authority, and since Decree No. 626 does not envisage such consultations either, the Government is requested to indicate in its next report the measures which have been taken to ensure that any exemption from medical examinations for workers employed in work processes involving exposure to benzene are only permitted after consultation with the social partners concerned.

Article 10, paragraph 1. In its previous comments, the Committee noted the information contained in the Government's report concerning the Bill to determine the qualifications of physicians examining workers exposed to benzene and other substances. The Committee notes that the Government's report makes no further mention to the above Bill. However, it notes that section 2(d) of Legislative Decree No. 626 of 19 September 1994 only defines the terms "competent physician" and "specialized occupational physician". The Committee therefore requests the Government to indicate the measures which have been taken or are envisaged to ensure that medical examinations of workers employed in work processes involving exposure to benzene or to products containing benzene are carried out under the responsibility of a qualified physician, approved by the competent authority, and with the assistance, as appropriate, of a competent laboratory.

The Government is also requested to indicate the manner in which these examinations ar certified.

Article 11, paragraph 1. In its previous comments, the Committee noted th section 3 of Act No. 1204 of 30 December 1971 respecting the protection of workin mothers prohibits the employment of women in dangerous work during pregnancy an during the seven months following delivery. The Committee notes that Ministeri Circular No. 28/98 of 4 March 1998, referring to a ruling by the Constitutional Court o this subject, confirms the prohibition imposed by section 3 of the above Act and recall the functions of the labour inspectorate in this field. The Committee recalls that th provision of the Convention provides that nursing mothers shall not be employed in wor processes involving exposure to benzene or products containing benzene. This provisio is intended to protect mothers and children during the whole period that mothers are likel to nurse their children, which may often exceed seven months following delivery. As consequence, the prohibition on the employment of nursing mothers cannot be limited b the legislation to a specific period. The Committee hopes that the Government will tak the necessary measures in the near future to ensure that nursing mothers (irrespective c the period for which they nurse their children) are not employed in work processe involving exposure to benzene or to products containing benzene. It hopes that th Government's next report will contain information on the progress achieved in th respect.

Article 11, paragraph 2. With reference to its previous comments, in which it note that, in accordance with Act No. 903 of 9 December 1977, the minimum age fo employment in work processes involving exposure to benzene or products containin benzene was set at 16 years of age. The Committee recalls once again that this provisio of the Convention prohibits the employment of young persons under 18 years of age except young persons undergoing education or training who are under adequate technic and medical supervision. The Committee hopes that the Government will take th necessary measures in the near future to ensure that no young person under 18 years c age is employed in work processes involving exposure to benzene or products containin benzene.

The Committee hopes that the Government's next report will provide informatio on any progress achieved in this respect.

Morocco (ratification: 1974)

The Committee notes the information provided by the Government in its report. I recalls that for a number of years it has been drawing the Government's attention to th need to include appropriate protection measures in its legislation respecting occupationa exposure to benzene, in order to bring the law into compliance with the provisions of th Convention.

The Government stated as long ago as 1980 that the Committee's comments on thi subject would be taken into account to supplement or amend, as appropriate, th provisions contained in the regulations issued under the draft Labour Code. In th observations made by the Committee after 1989, it noted that the regulations issued unde the draft Labour Code contained provisions designed to give effect to a number of th requirements of the Convention on which it had been commenting since 1977. It also note that the draft text did not contain provisions giving effect to *Article 3 of the Conventio* (consultation of the most representative organizations of employers and workers concerne regarding the granting of temporary derogations by the labour inspector under section 50 of the draft regulations) or to *Article 8, paragraph 1,* of the Convention (the provision o adequate means of personal protection against the risk of absorbing benzene through the skin for workers who may have skin contact with liquid benzene or liquid products containing benzene). In 1993, the Committee noted the Government's statement in its report for 1992 that the Ministry of Labour had prepared a draft Decree taking into account its comments. According to the Government, the draft Decree would give effect to certain Articles of the Convention and would contain a provision requiring means of personal protection for workers who may be exposed to benzene vapour.

After noting the discussions held in the Conference Committee for the second time in 1993, the Committee noted that the above draft Decree, drawn up to supplement the legislation concerning occupational exposure to benzene, had been transmitted for comments to the organizations of employers and workers concerned.

The Committee once again notes with regret that the draft Decree has still not been adopted. It once again expresses the firm hope that the Decree will be adopted in the near future and that it will give full effect to the Convention, and particularly to *Article 8, paragraph 1,* which provides that workers who may have skin contact with liquid benzene or liquid products containing benzene shall be provided with adequate means of personal protection against the risk of absorbing benzene through the skin. The Committee trusts that the Government will take the necessary action for this purpose as soon as possible.

[The Government is asked to report in detail in 2000.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Colombia, Croatia, France, Guinea, Iraq, Malta.*

Convention No. 137: Dock Work, 1973

Brazil (ratification: 1994)

1. Further to its previous observation, the Committee notes the information contained in the Government's first two reports, the observations made by the Federation of Dock Workers, the Stevedores' Trade Union of Santos, São Vicente, Guarujá and Cubatão, the Stevedores' Trade Union of São Sebastião, the Trade Union of Stowers of São Sebastião, the Inter-Occupational Trade Union of Casual Workers of the Itajaí Coast, the Boatmen of the Florianópolise de Santa Catarina Region, the National Federation of Stevedores and the National Federation of Foremen, Workers responsible for Loading and Unloading, Port Watchmen, Sectoral Workers and Stowers, and the Government's responses to these observations. Finally, the Committee notes the communication of the Trade Union of Stevedores of Santos, São Vicente, Guarujá and Cubatão received in the ILO during the present session of the Committee and will examine the matters raised, along with any comments made by the Government, at its next session.

2. In a communication addressed to the ILO in March 1996, the Federation of Dock Workers states that the policy of the privatization of ports pursued by the Government since the adoption of Act No. 8630 of 23 February 1993 issuing provisions on the legal framework for the operation of organized ports and port installations, and its related decrees, has resulted in waves of summary dismissals of dockworkers, including, for example, the dismissal of 112 workers in the port of Vitoria.

3. In their respective communications addressed to the ILO in 1997, the Stevedores' Trade Union of Santos, São Vicente, Guarujá and Cubatão, the Stevedores' Trade Union of São Sebastião and the Trade Union of Stowers of São Sebastião make a

number of allegations. The unions state that the legislation adopted since 1993 with respect to dock work, under cover of modernizing the sector, has resulted in significant job loss for casual workers and has reduced the strength of their trade unions. The unions assert that by abolishing all the customs followed in the port sector, the new legislation violates the principles set out in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The unions state that the Act has also made far-reaching changes in the system of the placement of dockworkers by requiring their registration on the registers maintained by the Manpower Management Agencies (OGMO) established in each port (section 18 of Act No. 8630). They alleged that this system has made the employment of unregistered workers very precarious and violates the provisions of this Convention, as well as those of the Termination of Employment Convention, 1982 (No. 158).

4. In their communications addressed to the ILO in May 1997, the Inter-Occupational Trade Union of Casual Workers of the Itajaí Coast, the Boatmen of the Florianópolise de Santa Catarina region, the National Federation of Stevedores and the National Federation of Foremen, Workers responsible for Loading and Unloading, Port Watchmen, Sectoral Workers and Stowers, state that Act No. 8630, and the decrees on port activities adopted thereafter, are as a whole in conformity with the spirit of the Convention in so far as these instruments provide, on the one hand, that each dockworker, without distinction on the grounds of the permanent or non-permanent nature of his employment relationship, shall be registered (section 18 of Act No. 8630) and, on the other hand, that priority for employment shall be accorded to registered dockworkers (section 26 of Act No. 8630). However, these trade unions report that employment of casual workers who are registered is more precarious despite the safeguards contained in the Act, such as section 26 above. Furthermore, they state that a number of private shipowners refuse to negotiate and conclude collective labour agreements on port workers as provided for in articles 19, 22 and 29 of Act No. 8630. Moreover, private shipowners refuse to have recourse to workers registered in the OGMOs of their respective ports and employ non-skilled workers, thereby jeopardizing safety and health standards, in violation of the requirements of the legislation and the Convention. Finally, these trade unions are strongly critical of the apathy of the Government in relation to the sometimes violent disputes caused by such practices.

5. In its first two reports, and in the comments made in reply to the allegations of the trade union organizations, the Government states that the adoption of Act No. 8630, which substantially modifies the legislation and customs followed in the port sector, forms part of an Integrated Programme for the Modernization of National Ports (PIMOP) designed to stimulate the activities of ports in the country. The Act provides a legal basis for the operation of ports and their installations, and for the administration of dockworkers. A Port Modernization Executive Group (GEMPO) was set up in 1995 to supervise the implementation of the above Programme. The Government indicates that although Act No. 8630 provides for a deregulation of industrial relations in the port sector (sections 19, 22 and 29), it nevertheless contains a number of provisions to protect the employment of workers in so far as possible (sections 26 and 70). The Government also states that it is endeavouring to address practical difficulties in the application of the Act through dialogue, and particularly the difficulties raised by trade union organizations. For this purpose, tripartite consultations and seminars, prepared with the technical assistance of the ILO and bringing together all the actors in the sector, were organized in 1996 and 1997. As a result, additional protection measures were adopted for casual workers. These measures include the implementation of an active policy of labour inspection in ports. Finally, a tripartite committee on the application of the Convention and the Dock Work

Recommendation, 1973 (No. 145), was established in 1997 to bring the national legislation fully into conformity with these instruments.

6. The Committee takes due note of the explanations provided by the Government. The Committee notes that, in so far as the national legislation on ports and in particular Act No. 8630, Chapter IV, requires registration of dockworkers, both permanent and casual, to be maintained by OGMO, the legislation appears to accord with *Articles 2 and 3 of the Convention*. However, the Committee is concerned about its practical application. The Committee notes the particularly high number of complaints received from trade union organizations representing dockworkers relating to the difficulties of applying the Act in practice. It therefore requests the Government to indicate in its next report the manner in which the placement system administered by the OGMOs, created by the Act, assures minimum periods of employment or a minimum income to all dockworkers, in accordance with the requirements of *Article 2, paragraph 2,* of the Convention. Please also indicate the measures which have been taken in accordance with the requirements of *Article 5* to encourage greater cooperation between port operators or their organizations and workers' organizations to overcome the alleged difficulties in concluding the collective labour agreements required by Act No. 8630 in sections 19, 22 and 29. The Government is also requested to indicate, in accordance with *point V of the report form*, the manner in which the Convention is applied in practice, by providing, for example, the available information on the number of dockworkers on the registers maintained by the OGMOs in certain organized ports and the changes in these numbers over the period covered by the report. Finally, the Government is requested to keep the ILO informed of the outcome of the work of the tripartite committee on the application of the Convention and Recommendation No. 145.

France (ratification: 1977)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the information supplied by the Government and the comments of the National Association of Dock Work Industries in French Ports (UNIM). It notes in particular the adoption of Act No. 92-496 of 9 June 1992 amending Act No. 47-1746 of 6 September 1947 on the organization of dock work in sea ports, and the conclusion of the national collective agreement on dock work in 1993-94. As a result of the above reforms, most professional dockworkers who used to do casual work are now employed under a monthly scheme by cargo-handling companies on the basis of an indefinite contract. The Government also indicates that some professional dockworkers are still employed on a casual basis but that this scheme will gradually disappear since no new registration cards are being issued.
>
> 2. The UNIM considers that the Convention is obsolete in view of technological developments in the port industry and the reforms in the organization of work in the port sector. It draws attention in particular to the provisions of the French legislation which restrict both the choice by cargo-handling companies of the staff they employ and the procedure for economic terminations.
>
> 3. The Committee refers to the tripartite meeting on social and labour problems caused by structural adjustment in the port industry held in Geneva in 1996 and recalls that one of the meeting's conclusions was that the ILO must continue to promote the ratification and application of the relevant international labour standards. The Committee would be grateful if the Government would continue to provide information on the application of the provisions of the Convention, in the light of the results of the above meeting, and the comments made by the UNIM.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

Requests regarding certain points are being addressed directly to the following States: *Afghanistan, Australia, Egypt, Norway, Romania, United Republic of Tanzania, Uruguay*.

Information supplied by *Costa Rica* and *Portugal* in answer to a direct request has been noted by the Committee.

Convention No. 138: Minimum Age, 1973

Costa Rica (ratification: 1976)

General minimum age

The Committee notes the information supplied by the Government in its report According to the Government, the amendment of the Labour Code (*Reforma del Códig de Trabajo* No. 7680 of 1997), which would set the minimum age for work at 12 year of age, was submitted to the legislature *(Plenario Legislativo)* and published in *La Gacet* on 14 August 1997. This Bill was vetoed by the Executive for unconstitutionality o sections 88 and 89 on 24 July 1997 and returned to the legislature. The Committee note that the said sections, if adopted as such, would not be in conformity with the Convention It notes the Government's indication that the process of amending the Labour Code t bring it in line with the Convention is, therefore, still under way.

The Committee further notes the adoption of the Code of Children and Adolescent (*Código de la niñez y la adolescencia*, Legislative Decree No. 7739 of 6 January 1998) under which the minimum age is set at 15 years old (section 92). The Committee note with interest that all protections under Chapter VII (Special system of protection of chil labour) of this Code are to cover all types of work by adolescents: work on one's own account, in both the formal and the informal sectors, work at home and in famil undertakings (section 84).

Recalling that the minimum age of 15 years was specified by Costa Rica, at the tim of its ratification of the Convention, in accordance with *Article 2, paragraph 1, of th Convention*, the Committee highly appreciates the decision that the Government too regarding the proposed amendments to sections 88 and 89 of the Labour Code mentione above. It again requests the Government to provide information on progress made i bringing the provisions of the Labour Code into line with the Convention as well as th Code of Children and Adolescents with regard to the general minimum age for work o employment applicable in the country subject to such exceptions as permitted under othe Articles of the Convention.

Hazardous work

Further to its previous comments, the Committee notes that the Code of Childre and Adolescents prohibits the work of "adolescents", defined as persons aged between 1 and 18, in unhealthy and dangerous places, retail shops of alcoholic beverages, activitie subjecting their security or that of other persons to the minors' responsibility, work wit dangerous machinery, contaminating substances and excessive noise (sections 2 and 94) The report also refers to provisions of the same Code regarding limits to hours of wor for young persons and the prohibition of their night work.

The Committee notes that, although these provisions are explicit and specific for certain types of work, such as work in retail shops of alcoholic beverages, some notions like unhealthy and dangerous places, dangerous machinery and contaminating substances need further specification to be implemented as a prohibition, especially with the possible imposition of penalties as the Convention requires under *Article 9*. The Committee again asks the Government to indicate any measures taken or envisaged to determine, in consultation with the employers' and workers' organizations, types of work or employment prohibited to persons under 18 in accordance with *Article 3, paragraph 2*.

Exceptions as to light work

The Committee notes that the Government makes no reference to *Article 7* in the report, and the Code of Children and Adolescents has no provisions on exception to the minimum age regarding light work. However, the Committee recalls that the current Labour Code allows work of children aged 12 years or over (section 89) without limiting it to light work. It recalls that exceptions to the general minimum age for work are permitted only in regard to light work under conditions prescribed in *Article 7* of the Convention, for persons aged 13 years or more instead of 12 years. The Committee notes that the above-mentioned Bill to amend the Labour Code would not have resolved this problem, and requests the Government to indicate any measures taken to ensure that access to employment under the age of 15 years may be allowed, exceptionally, only from 13 years of age on light work meeting the criteria set out in *Article 7*.

General measures for the elimination of child labour

In its previous observation, the Committee noted the Organic Act of the National Childhood Foundation (No. 7648, published on 20 December 1996) and requested the Government to provide information on the activities actually carried out by this body, in so far as they have bearing on the application of the Convention in practice. In the absence of such information in the report, apart from the repeated reference to the text of the same Act, the Committee again requests the Government to provide information on various measures taken for the elimination of child labour either by the said Foundation, or any other body concerned with the rights of children and young persons, or more specifically with child labour. In this regard, the Committee notes that the Decree for the constitution of a National Committee on the Combat against Child Labour was signed in March 1997, and would be grateful to the Government for including information on the activities of this Committee, and a copy of this Decree.

France (ratification: 1990)

Further to its earlier comments, the Committee notes the information provided by the Government in its report. It requests the Government to supply additional information on the following points.

Minimum age in the maritime sector. Further to its earlier comments, the Committee notes with satisfaction the amendment to section 115 of the Maritime Labour Code (Act No. 97-1051 of 18 November 1997), which raised the minimum age for working on board ship to 16 years, as opposed to 15 years previously. This provision gives effect in law to *Article 2, paragraph 1, of the Convention*, under which the minimum age of 16 years has been specified. The Committee requests the Government to provide information on the practical application of this minimum age in the maritime sector.

Minimum age in agriculture and for domestic employees. The Committee notes the Government's statement in its report to the effect that Decree No. 97-370 of 14 April 1997 respecting conditions of employment of young agricultural workers is too recent to allow of an assessment of its application in practice or any conclusions to be drawn. The Committee notes, however, the Government's intention to carry out a statistical survey in this area and requests the Government to indicate the results of the survey once it has been carried out.

The Committee also notes the Government's information in its report to the effect that employment of children aged between 14 and 16 years as domestic employees appears to be exceptional, according to information supplied by various departmental labour, employment and vocational training authorities. Given that domestic employees were mentioned specifically as being an area of concern by the French Democratic Confederation of Labour (CFDT) in its comments in 1996 on the application of the Convention, the Committee would be grateful if the Government would continue to supply information on the practice of employing young persons as domestic workers.

Enterprises involving artistic performances and modelling agencies. In its previous comments, the Committee noted the observations of the CFDT according to which the granting of individual authorizations for participation in a performance and of approvals to modelling agencies holding licences allowing them to engage children without individual authorization is dependent on the affirmative opinion of Departmental Councils for the Protection of Children, but that these councils are not very active, except in the Parisian region. Furthermore, these councils do not permit employers' and workers' organizations to be consulted since they are composed of officials and judges.

The Committee notes the Government's statement in its report to the effect that the committees established under the Departmental Council for the Protection of Children, which consider applications for individual authorizations for participation in performances or issue approvals to modelling agencies holding licences allowing them to engage children without individual authorization, are active in all the country's departments, contrary to the comments of the CFDT. The Committee requests the Government to provide in its next report more detailed information on the activities of these committees.

The Committee also notes the following arguments put forward by the Government: (i) consultation of employers' and workers' organizations would not guarantee better protection of children, since the members of the committees are professionals in this area; (ii) the necessary measures have been taken to ensure the protection of children employed by modelling agencies holding licences allowing them to employ children without individual authorization.

The Committee must once again draw attention to the fact that, under *Article 8* of the Convention, exceptions to the prohibition of employment or work under *Article 2* are permitted for the participation of children in activities such as artistic performances only under precise conditions, namely: (i) the employers' and workers' organizations concerned must be consulted beforehand; and (ii) the competent authority must issue an individual authorization setting out the conditions of employment and restricting the number of hours that may be worked. The Committee notes that the Government's arguments referred to above put in doubt the two conditions specified by the Convention, namely consultation and the individual nature of the authorization given.

The Committee requests the Government to indicate the manner in which employers' and workers' organizations have been consulted, not only with regard to the general provisions relating to the employment of children, as the Government stated in its previous report, but also with regard to the conditions for the granting of individual work and employment authorizations by the competent authorities, in derogation of *Article 2* of the Convention.

The Committee also requests the Government to indicate measures that have been taken or are envisaged to ensure that the exceptions to the prohibition of employment or work by persons below the minimum age can be granted only in individual cases, in accordance with *Article 8, paragraph 1.*

Undeclared work. The Committee takes note of Act No. 97-210 of 11 March 1997 respecting more effective measures against illegal employment. The Committee requests the Government to provide information on the application of this Act in practice with regard to the employment of children.

Romania (ratification: 1975)

Minimum age for admission to employment or work

1. In its previous comments, the Committee noted the discrepancy between article 45(4) of the Constitution of 1991, under which minors under the age of 15 may not be employed as wage-earners, and section 7 of the Labour Code of 1972 which sets the minimum age for admission to wage-earning employment at 16 years.

The Committee notes the Government only indicates in its report that there are no other legal provisions or special measures concerning child labour. It recalls that the minimum age of 16 years was specified by Romania, in accordance with *Article 2, paragraph 1, of the Convention,* upon its ratification of the Convention. In the absence of reply to the previous observation on this point, the Committee again asks the Government to indicate the measures taken or envisaged to ensure that access to employment of those who have attained the age of 15 but not 16 years may be allowed, exceptionally, only for work meeting the criteria set out in *Article 7.*

2. With regard to *unpaid employment or work of children,* the Committee notes the Government's indication that there are no legislative measures envisaged at the moment to fix the minimum age for admission to unpaid employment or work. It also notes that, according to the Government, unpaid child labour in rural area occurs especially within the family, although no special study has been made on the issue. Recalling that the Convention covers all employment or work, irrespective of the existence of wage payment or a formal employment contract, the Committee requests the Government to continue to supply information on any development in legislative measures, and also on general measures to eliminate child labour as noted below, where they relate particularly to child labour outside formal employment relationship.

National policy on the abolition of child labour and related measures

Further to its previous observation, the Committee notes the Government's statement in its report that, although there are no specific programmes on child labour, the Government has initiated a broad action to fight poverty by intensifying social protection for the most vulnerable population groups so as to let the children in these difficult situations to continue their compulsory education, for instance, by increasing child allowance and granting supplementary family allowance for the second child. It asks the Government to provide any assessment of the impact of these measures on the elimination of child labour.

The Committee also notes from the Government's report that, by virtue of Urgent Government Order No. 26/1997, a special Department for Child Protection headed by a Secretary of State was set up for the purpose of establishing decentralized public services for child protection. The Committee requests the Government to supply the text of the said

Order, which the Government states was attached to the report, but has not been receiv by the Office, and also to continue to supply information on the activities of t decentralized system of child protection as they relate to the application of the Conventic

The Committee further notes the Government's indication regarding the support the International Programme on the Elimination of Child Labour (IPEC), which help in 1997 the National Institute of Research for Labour and Social Protection to conduc study on child labour in Romania, and enabled a national seminar to be held in Mar 1998, where proposals for the national policy and the National Plan of Action against ch labour were elaborated. The Committee requests the Government to supply the results the above study on child labour, and to state whether the national policy and the Natio Plan of Action have been adopted by the authority, and if so to send copies to the Offic

The Committee hopes that the Government will continue to provide information its efforts to eliminate child labour and to ensure full application of the Convention practice, including more detailed information on the activities of the labour inspector regarding child labour, such as the number of the inspection visits made, extracts fr official reports and details of the number and nature of violations recorded as well sanctions imposed *(point V of the report form)*.

Rwanda (ratification: 1981)

The Committee refers to its previous comments and notes the draft Labour Co appended to the Government's report. The Committee hopes that the draft Code will adopted rapidly and take account of the following points.

Article 2, paragraph 1, of the Convention. The Committee refers to its previo comment and notes that the draft Code extends the minimum age provision to t agricultural sector. However, the Committee notes that the draft Code's provisio concerning child labour apply only to waged employment, similarly to the Labour Co in force (section 2.1 of the Labour Code in force and also the draft Labour Code). T Committee also notes that the Government acknowledges the need to extend the scope application of the minimum age to include self-employment. Having regard for t acknowledgement, the Committee requests the Government to indicate the measures tak or envisaged to ensure that no person under the minimum age laid down (14 years) shou be admitted to employment or work in any occupation, in particular to self-employme

Article 2, paragraph 3. The Committee requests the Government to provi concrete information concerning compulsory education, in particular the age at whi compulsory education is completed, and to provide a copy of the legislative text whi regulates compulsory education.

Article 3. In its previous comment, the Committee had requested the adoption the Decree provided for under section 124 of the current Labour Code in order to defi the types of work and the categories of enterprises which are prohibited for minors so to give full effect to *Article 3* of the Convention. However, the draft Labour Co prohibits the employment of minors in certain employment and enterprises determined the Ministry (section 156 of the draft Labour Code) and their continued employment work recognized as being beyond the physical capacity or harmful to the health of t minor and in which case, provides for their transfer to more suitable employment (secti 158(2) of the Labour Code). Moreover, workers who are under the age of 16 years m not perform work that is unhealthy, arduous, harmful or dangerous to their health a training (section 157(3) of the draft Code) and may be admitted to employment in t activities determined by Ministerial Decree only after a medical examination (secti 158(3) of the draft Labour Code).

The Committee notes that these provisions appear to set the minimum age for dangerous work at 16 years instead of 18 years, and that the relationship between these provisions (sections 156 to 158) is unclear. The Committee recalls that *Article 3* of the Convention categorically prohibits minors under the age of 16 years from performing dangerous work and only authorizes the employment of minors aged between 16 years and 18 years under very specific conditions. The Committee requests the Government to ensure that the minimum age at which minors are employed to perform dangerous work is established at 18 years and that the conditions under which a minor aged between 16 years and 18 years may work are in conformity with *Article 3, paragraph 3*, of the Convention.

Moreover, with regard not only to the above provisions of the draft Labour Code but also to the Labour Code in force (section 124 of the Labour Code), the Committee recalls that it is essential that the Decree envisaged clearly defines the type of work and the categories of enterprises barred to minors in order that the legislative provisions which prohibit dangerous work for minors can be actually implemented. Consequently, the Committee requests the Government to continue with its efforts in this regard and to indicate any progress made.

Article 7, paragraphs 1 and 3. In its previous comments, the Committee noted that under sections 24 and 125 of the current Labour Code the Minister may grant exemptions to the minimum age at which a person may be admitted to employment taking into account the particular circumstances of the occupation or the situation of the persons concerned. The Committee requested the Government to indicate the measures taken or envisaged to define the scope of the exemptions provided for under the above sections of the Labour Code in the light of the provisions of *Article 7* of the Convention, since the Convention provides exemptions to the minimum age at which a minor may be admitted to employment only for light work performed by minors of 12 years of age or over, provided that this work is not likely to be harmful to their health or development and does not prejudice their attendance at school.

In this respect, the Committee notes that section 157(2) of the draft Labour Code limits the scope of the exemptions granted in the preceding paragraph of section 157(2) to minors aged between 12 years and 14 years to light work and imposes the condition that this work may not be harmful to their health or development, prejudice their attendance at school or their participation in vocational orientation or training programmes.

The Committee requests the Government to provide information in respect of any exemption granted under these provisions (sections 24 and 125 of the current Labour Code or will be granted under section 157(2) of the draft Labour Code, in the event it is adopted).

Article 8. The Committee recalls the Government's statement in its report received in 1991 to the effect that the application of this provision is provided for under sections 24 and 125 of the Labour Code (sections 13 and 157 of the draft Labour Code) which lays down exemptions to the minimum age of 14 years granted by the Minister of Labour. The Committee also recalls that the Government stated in its 1987 report that this provision still requires an implementing regulation. In the absence of more recent information, the Committee requests the Government to provide information in respect of the prevailing practices concerning the work performed by minors in such activities as artistic performances and to indicate the measures adopted to ensure that their participation is only undertaken upon specific authorization, within the hours of employment and the conditions prescribed.

Article 9, paragraph 3. The Committee notes that section 227 of the Bill, similarly to section 168 of the current Labour Code, lays down the obligation for the employer to maintain an "Employment register" whose format shall be established by Ministerial Order. The Committee notes the Government's intention, presented in the Government's report on the draft Labour Code, to include the name and age of employed persons who are under the age of 16 years. The Committee recalls that the Convention requires that this register should include information on persons under the age of 18 years and not under the age of 16 years. The Committee hopes that this Ministerial Order will be adopted in accordance with the Convention in this regard and requests the Government to provide an example of this register as soon as its format has been established.

Article 9, paragraph 1, and point V of the report form. The Committee requests the Government to provide information concerning the measures adopted to ensure the effective application of the Convention, as well as the practical application by providing, for example, statistical data in respect of the number, age and gender of children and adolescents who are employed, copies of extracts of the reports of the inspection services and violations observed.

Uruguay (ratification: 1977)

Further to its previous observations, the Committee takes due note of the statement made by the Government in its report that the minimum age for employment in Uruguay is 15 years, because Decree No. 852/971 of 16 December 1971, which fixes it at 15 years, was adopted later than the Code of the Child (Act No. 9.342 of 6 April 1934) which used to fix the minimum age at 14 years. The Government adds that the ratification of the Convention with the specified minimum age of 15 years has a direct effect in Uruguay without the need for further legislative action. The Committee recalls, however, that the Code of the Child of 1934 still remains in force and consequently the provisions of its section 223 which provides for the minimum age of 14 years. This undoubtedly made the Government indicate in its report submitted to the United Nations Committee on the Rights of the Child that the minimum age was 14 years according to the Code of the Child (paragraphs 244 and 245 of CRC/C/3/Add.37). As a consequence, the Committee considers it necessary to take particular measures to unify the national legislation in an adequate manner so as to fix 15 years clearly as the minimum age for admission to employment or work. The Committee considers it essential in the application of the Convention to establish a general minimum age unequivocally and to make it known to everyone in the country so that measures of enforcement could be taken effectively.

Noting that a Bill of the Code of the Children and Adolescents is currently before Parliament, in which the minimum age is set at 15 years old, the Committee hopes that this Bill would be adopted soon so as to eliminate any doubt or ambiguity in the applicable minimum age and asks the Government to supply information on any development in this regard.

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In addition, requests regarding certain points are being addressed directly to the following States: ***Algeria, Antigua and Barbuda, Costa Rica, El Salvador, Equatorial Guinea, Iraq, Libyan Arab Jamahiriya, Netherlands, Niger, Tunisia, Uruguay.***

Convention No. 139: Occupational Cancer, 1974

Requests regarding certain points are being addressed directly to the following States: *Argentina, Croatia, Denmark, France, Iceland, Ireland, Norway, Sweden, Venezuela.*

Convention No. 140: Paid Educational Leave, 1974

Requests regarding certain points are being addressed directly to the following States: *Afghanistan, Belgium, Finland, Germany, Guinea, Guyana, Iraq, Nicaragua, Slovenia.*

Convention No. 141: Rural Workers' Organisations, 1975

Afghanistan (ratification: 1979)

The Committee notes with regret that for the second year in succession the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous direct requests, which read as follows:

> In its previous comments, the Committee recalled that, under *Article 3, paragraph 2, of the Convention*, rural workers' organizations are to be independent and voluntary in character and to remain free from all interference, coercion or repression. The Committee noted with concern in this regard that several provisions of the Labour Code conferred prerogatives on the single trade union designated by name as "the Central Council of the DRA's Trade Unions", particularly in respect of the preparation of legislation and appointments to certain jobs (section 148(2) and section 3(4) of the Code). Furthermore, it noted that the objects of the Code included the consolidation of labour discipline and the implementation of production plans (section 1(4) of the Code).
>
> The Committee had noted the information provided by the Government concerning the role of cooperatives generally under the Cooperative Law of 1981 and the voluntary nature of their membership, free from any form of coercion or pressure. It also duly notes that, due to the special conditions prevailing in the country, the Government has had difficulty collecting information from the concerned organizations. The Government is requested to provide, in its next report, a copy of the recent statutes of the Peasants' Cooperative Union of Afghanistan and to provide statistical information concerning the number of its members as soon as this is available.
>
> The Government is requested to indicate, in its next report, any measures taken to encourage rural workers' organizations to play their role in economic and social development free from all interference of any sort as a result of this cooperation.

India (ratification: 1977)

The Committee takes note of the information provided by the Government in its report.

The Committee recalls that its previous comments concerned the following:

(1) refusal of the Government of Maharashtra to negotiate with muster assistants (workers that provide water and medical facilities at worksites) employed through the Employment Guarantee Scheme;

(2) alleged inadequate pay and service conditions of female workers employed in the state government's "Integrated Child Development Scheme";

(3) working conditions and wages of forest and brick-making workers.

Muster assistant

The Government's report indicates that the High Court decision which revoked the notification issued by the Government providing that muster assistants were not covered under the Industrial Dispute Act (IDA), 1947, or the Trade Unions Act, 1948, is presently being challenged before the Supreme Court of India. The Committee notes that the Government indicates that it is therefore not presently in a position to communicate any information in this regard. The Committee recalls, once again, its previous comments in which it considered that muster assistants were persons engaged in related occupations in a rural area as defined by *Article 2 of the Convention*. The Committee asks the Government to provide the text of the Supreme Court's decision when available and also to indicate, in its next report, the legislation which governs the rights of these workers under the Convention as well as any steps taken to promote the widest possible understanding of the need to further the development of rural workers' organizations, including for muster assistants, as provided for under *Article 6* of the Convention.

Female workers employed in the state government's "Integrated Child Development Scheme"

The Committee notes with interest that the Government has created awareness camps to help unorganized workers engaged in small-scale industries to learn more about their rights and entitlements under the various laws. These programmes cover a wide range of subjects including the right of association, and concentrate on special categories of workers, particularly women workers. The Committee requests the Government to specify the impact of those awareness camps on the creation and growth of strong and independent associations for women employed in the state government's "Integrated Child Development Scheme" and how it promotes the widest possible understanding of the need to further the development of female workers in this scheme and of the contribution these associations can make to improve employment opportunities for women and conditions of work and life in rural areas.

Forest and brick-making workers

Concerning the working conditions and wages of forest and brick-making workers, the Committee had requested the Government to take measures to improve the enforcement machinery of laws covering these workers in the rural area. The Government indicates that the provisions of the Minimum Wages Act, 1948, will be implemented by all the divisional heads in respect of those workers and admits that enforcement of the labour legislation extended to these workers had not been satisfactorily managed due to the inadequacies of the labour inspection mechanisms to ensure that workplaces scattered over wide areas are inspected regularly. The Committee, however, notes that the Government has not made any reference to the possibility of those workers to form strong and independent organizations to improve their working conditions and the measures envisaged by the Government to facilitate this objective. The Committee therefore once again asks the Government to provide information on this point and recalls that, as referred to in Rural Workers' Organisations Recommendation, 1975 (No. 149), such organizations should participate in economic and social development and in the benefits resulting therefrom, should be able to represent further and defend the interest of rural workers by undertaking collective negotiation and consultation at all levels and should be able to improve their conditions of work including respect of occupational safety and health.

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In addition, a request regarding certain points is being addressed directly to *El Salvador*.

Information supplied by *Zambia* in answer to a direct request has been noted by the Committee.

Convention No. 142: Human Resources Development, 1975

Afghanistan (ratification: 1979)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee refers to its observation on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in which it notes the allegations that access to all levels of general, technical and vocational education is prohibited for women. The Committee recalls the Government's obligation under the Convention to develop policies and programmes to encourage and enable all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work. It hopes to find in the Government's next report full information on women's access to education and training and measures taken in this respect.

Brazil (ratification: 1981)

1. The Committee notes the Government's report which states that the Ministry of Labour has a proposal for vocational education coordinated with labour and wages policy. The aim is to eliminate illiteracy among young people and adults, and at the same time to guarantee availability of vocational training sufficient to allow at least 20 per cent of the economically active population to undergo training and retraining every year. The Committee observes, as the Government also notes in its report, that these objectives are closely linked to employment policy. With reference to its comments on the application of the Employment Service Convention, 1948 (No. 88) and the Employment Policy Convention, 1964 (No. 122), the Committee would be grateful if the Government would continue to describe the methods used to put into practice comprehensive and coordinated policies and programmes in the field of vocational guidance and training and their relationship with employment and the public employment services *(Article 1, paragraphs 1 to 4, of the Convention)*.

2. The Committee notes with interest the information on the National Programme of Worker Training (PLANFOR), and the assessment of the programme, provided by the Government with its report. The Committee trusts that the Government will continue to supply information on the manner in which the systems of vocational guidance and vocational training are made to meet lifelong vocational training needs in all sectors of the economy *(Articles 3 and 4)*.

3. The Committee notes the observations of the Union of Railway Enterprises Workers, area of Mogiana concerning the situation of apprentices at one company, and the detailed reply sent by the Government. The Committee again refers to *Article 4* of the Convention and to the provisions of Paragraph 16 and subsequent Paragraphs of Recommendation No. 150, and would be grateful if the Government would include in its

next report information on the efforts made to ensure that all young people have the opportunity of initial vocational training.

Nicaragua (ratification: 1977)

In a direct request made in 1993, the Committee noted with interest the creation of the National Technological Institute (INATEC) responsible for coordinating the planning, implementation and supervision of all programmes of vocational training and technical education and for assuring to this effect continued concerted action by the various competent ministries. The Committee notes that the INATEC, which has a tripartite Governing Council, has modernized vocational training with a New Model for Vocational Training. The INATEC is supported with international technical assistance, in particular from the ILO, which is implementing a programme for strengthening the Nicaraguan vocational training system financed by the Government of the Netherlands. The Committee trusts that the Government will continue to provide information on the activities of the INATEC to ensure application of the Convention, indicating also whether measures have been taken to extend the vocational training systems, in accordance with *Article 3 of the Convention*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Azerbaijan, Belarus, Ecuador, El Salvador, Finland, France, Hungary, Iraq, Jordan, Kenya, Republic of Korea, Latvia, Lithuania, Niger, Poland, Spain, United Republic of Tanzania, Tunisia, Venezuela*.

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976

Australia (ratification: 1979)

The Committee takes note of the communication from the Australian Council of Trade Unions (ACTU) denouncing the excessively short time-limits allowed for replying to the consultation undertaken by the Government in respect of the denunciation of the Placing of Seamen Convention, 1920 (No. 9). The Committee also notes the comments provided by the Government in reply to the allegations.

Noting the information concerning the exchange of communications between the ACTU and the Ministry of Labour on this matter, and noting also the Government's information according to which it informed the representative maritime organizations and the ACTU of its intention to denounce Convention No. 9 more than two months before sending the letter of 23 February 1998 formalizing the consultation, the Committee is bound to recall that, in its 1982 General Survey, it pointed out that under *Article 2 of the Convention*, procedures for consultation on each of the subjects listed in *Article 5, paragraph 1*, must be effective, which means that they must enable workers' and employers' organizations to comment usefully on the subjects in question. The consultations must therefore be held before the Government takes any decision and must be capable of influencing that decision (paragraph 44). Taking into account the foregoing, the Committee notes that the very short time-limit of only one day for the ACTU to indicate its position with regard to the denunciation of Convention No. 9 is more akin to a simple exchange of information, similar to the statement made to the representative organizations in December 1997, than to a genuine and "effective" consultation, which must involve a process which is conducive to and assists in the decision-making process (paragraph 42).

The Committee trusts that the Government will take its comments into account, in particular when consultations take place on the occasion of the examination of the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), which the Government has stated it wishes to ratify.

Bahamas (ratification: 1979)

The Committee takes note of the information provided by the Government in reply to its previous observation. It notes with interest that the Ministry of Labour in September 1998 organized a tripartite seminar which dealt among other things with the activities of the ILO, and which testifies to the will of the Government to allow the social partners to participate effectively in the consultation procedures on the matters referred to in the Convention.

The Government indicates that the Joint Tripartite Advisory Committee met on ten occasions last year and that the representative organizations of employers and workers were regularly consulted on the matters referred to in *Article 5, paragraph 1(a), (b) and (d), of the Convention*. The Government in addition proposes to carry out consultations on the re-examination of unratified Conventions and Recommendations (subparagraph (c)).

The Committee trusts that the Government will continue to provide information which will allow it to assess fully the effect given to the provisions of the Convention. In this regard, the Committee refers to its previous comments and requests the Government to provide detailed answers in its next report to the questions raised in the report form for each Article, taking account of the following indications.

Article 2. Please describe how the nature and the form of the procedures followed by the Joint Tripartite Advisory Committee ensure that effect is given to this Article. The Committee recalls that under the terms of paragraph 1, the procedures applied must ensure "effective" consultations. In its 1982 General Survey on the Convention, the Committee explained that the consultations required were those which would enable employers' and workers' organizations to comment usefully on the subjects listed in *Article 5, paragraph 1*, that is, consultations capable of influencing the Government's decision (paragraph 44). The consultations must therefore be held before the Government takes any decision.

Article 5, paragraph 1(a) (Items on the agenda of the International Labour Conference). The Committee points out that consultations on this question should cover not only the Government's replies to questionnaires sent out in preparation for a first discussion, but also the Government's comments on draft texts drawn up by the ILO as a basis for the second discussion.

Subparagraph (b) (Submissions of Conventions and Recommendations to the competent authorities). With regard to this point, the Committee in its 1982 General Survey indicated that the Convention goes beyond the obligation of submission laid down in article 19 of the ILO Constitution in that it asks Governments to consult representative organizations *before* finalizing its proposals to the competent authority concerning the Convention and Recommendation which must be submitted to it. An exchange of views or information after the instruments have been submitted to the competent authority would therefore not meet the purpose of the Convention (paragraph 109).

Subparagraph (c) (Re-examination of unratified Conventions and Recommendations). The Committee considered it useful to emphasize the importance of tripartite consultations in this area in promoting the implementation of international labour standards and to recall that the purpose of this provision is to allow governments to consider what measures might be taken, through changes in national legislation and practice, to promote the ratification of a Convention or the implementation of a Recommendation which could not be put into effect at the time of submission to the competent authority.

Subparagraph (d) (Reports on ratified Conventions). Referring once again to its 1982 General Survey, the Committee recalls that this provision goes beyond the reporting obligation laid down in article 23, paragraph 2, of the Constitution. It requires consultations on problems that may arise out of reports to be made under article 22 on the application of ratified Conventions. As a rule such consultations concern the content of the reply to the comments of the supervisory bodies (paragraph 124).

Article 6. The Committee notes the wish expressed by the Government to consult the representative organizations on the need to produce an annual report on the working of the procedures provided for in the Convention. The Committee asks the Government to provide information on the results of any such consultations.

Costa Rica (ratification: 1981)

The Committee notes the Government's report for the period ending May 1998 and the useful information provided in annex. It notes the detailed information on the consultations held under the aegis of the Supreme Labour Council, in accordance with *Article 5, paragraph 1(b) and (c), of the Convention*, on the proposals relating to the submission of Conventions and Recommendations to the Legislative Assembly and on the effect which has been given to them. It also notes the information on the consultations held, in accordance with *Article 5, paragraph 1(a)*, concerning replies to questionnaires on certain items on the agenda of the 86th International Labour Conference.

Furthermore, the Committee note the comments made by the Government in reply to the communication of the Inter-Confederal Committee of Costa Rica alleging non-compliance with the provisions of *Article 5, paragraph 1(d)*. The Government states, without providing other information, that it gives effect to the above provisions by transmitting systematically to the representative organizations of employers and workers the reports to be submitted to the ILO under article 22 of the ILO Constitution. In this respect, the Committee wishes to recall that, in its General Survey of 1982, it stated that, as required by *Article 2* of the Convention, the consultation procedures on each of the subjects enumerated in *Article 5, paragraph 1*, must be effective, which means that they have to enable employers' and workers' organizations to have a useful say on the above matters. For this purpose, the consultations must be held prior to the adoption of a decision by the Government and sufficient time must be given to the representative organizations to enable them to make any comments that they consider useful. In view of the above, the Government is requested to indicate whether effect is given in the spirit of the Convention to the above provisions of *Article 2* with regard to the report provided to the ILO on the application of ratified Conventions.

The Committee requests the Government to continue supplying detailed information in future reports on the consultations held on the matters enumerated in *Article 5, paragraph 1(a), (b) and (c)*, and hopes that it will provide information on the consultations held concerning the report to be submitted to the ILO on the application of ratified Conventions *(point (d))*, taking into account the explanations provided in this observation.

Côte d'Ivoire (ratification: 1987)

The Committee notes the Government's last report and the information provided in reply to the Committee's previous observation. The Committee notes the Government's statement to the effect that it wishes to take all the necessary measures to make the Tripartite Committee on matters concerning the ILO fully operational. The Committee trusts that, for the period covered by its next report, the Government will be able to provide full and detailed information on the consultations which address the points indicated in *Article 5, paragraph 1, of the Convention.*

Ecuador (ratification: 1979)

The Committee notes the Government's report for the period ending September 1997. The Committee notes that this report reiterates the comments made in the previous report without replying to the Committee's comments. The Committee recalls that it had expressed the firm hope the Government would intensify its efforts to ensure that effective consultations are held, as laid down in *Article 2 of the Convention.* The Committee requests the Government to take the necessary action to this effect in the very near future and trusts that, in its next report, it will provide information on consultations conducted with respect to the matters set out in *Article 5, paragraph 1, of the Convention.*

Gabon (ratification: 1988)

The Committee notes the Government's report and the information that it contains in reply to its previous direct request. It also notes the comments made by the Free Federation of Energy, Mining and Similar Enterprises (FLEEMA) and the Confederation of Gabonese Free Trade Unions (CGSL).

The Committee notes the information provided in the Government's report on the consultations held on each of the points set out in *Article 5, paragraph 1, of the Convention.* It notes in particular that, in accordance with *point (b)* of the above paragraph, the Home Work Convention, 1996 (No. 177), as well as various instruments adopted at the last Maritime Session of the International Labour Conference, have been submitted to the competent authority or authorities. Noting that the FLEEMA, in its comments, alleges that the Safety and Health in Mines Convention, 1995 (No. 176), and Recommendation No. 183 have not been submitted to the competent authority, the Committee wishes to recall on this point that it stated in its 1982 General Survey (paragraph 109) that the Convention goes beyond the obligation to submit stipulated in article 19 of the ILO Constitution and requests the Government to consult the representative organizations before finalizing the proposals to be submitted to the competent authority or authorities in relation to the Conventions and Recommendations which have to be submitted to them. In the light of these explanations, the Government is requested to make the comments that it considers appropriate on the observations of the FLEEMA.

Finally, with regard to the application of *Article 6*, the Committee notes the Government's reply to the observation made by the Gabonese Confederation of Free Trade Unions alleging the absence of consultations on the appropriateness of issuing an annual report on the working of the procedures provided for in the Convention. The Government states that budgetary restrictions have prevented the establishment of a tripartite consultation body for the purposes set out in the Convention, which has been the major contributing factor to this situation. The Committee requests it to provide information in future reports on any development relating to this subject and hopes that such consultations will be held in the near future.

India (ratification: 1978)

The Committee notes the observations made by the Centre of Indian Trade Unions (CITU) in its communication to the ILO in July 1998, a copy of which was transmitted to the Government. The CITU reiterates its previous observations concerning the irregularity with which tripartite consultations are held, particularly in the Tripartite Committee on Conventions. The Government is requested to make the comments that it considers appropriate on the observations of the CITU. It is also requested to provide detailed information in its next report in reply to the matters raised in the Committee's previous observation, which read as follows:

> 1. The Committee has noted the Government's last report and the communication sent to the ILO in August 1997 in response to its previous observation. The Committee also notes the observations made by the Standing Conference of Public Enterprises (SCOPE), the Indian National Trade Union Congress (INTUC), the trade union organization Hind Mazdoor Sabha (HMS) and the Centre of Indian Trade Unions (CITU), together with the Government's responses.
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> 2. In its communication the Government indicates that the representative organizations of employers and workers are regularly consulted on various matters relating to the standards and activities of the ILO, in particular those laid down in *Article 5, paragraph 1(a) and (c), of the Convention*. Following consultations, the Government is preparing to ratify certain ILO Conventions, in particular the priority Conventions Nos. 105 and 122, and also Convention No. 127. Finally, the Government indicates that in view of the numerous political changes which have occurred in India from 1996 to the beginning of 1997, it has been difficult to undertake tripartite consultations during this period, in particular within the Tripartite Committee on Conventions which is in fact scheduled to meet soon.
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> 3. In its observation, SCOPE indicates that the Convention is applied in a satisfactory manner. The observation made by INTUC pertains to the preparation of reports to be submitted to the ILO. The trade union organization suggests to the Government that it should consult the representative organizations of employers and workers, before sending the final versions of reports. In its observation, the CITU repeats its previous comments regarding the irregular nature of the tripartite consultations, in particular those relating to the application of ILO standards, despite the comments made by the Committee. In its responses, the Government indicates that consultation with union organizations in the preparation of reports to be submitted to the ILO is an obligation emanating from the provisions of the ILO Constitution. It adds that in practice consultations on the ILO's activities follow a well established procedure. The questionnaires on the items included in the agenda of the International Labour Conference are sent to the representative organizations. Their comments are forwarded to the ILO or attached to the Government's reports. In this regard, copies of the reports sent to the ILO are systematically forwarded to them.
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> 4. The Committee invites the Government to provide details, in its next report, of the activities undertaken as a result of the concerns expressed by the union organizations. In addition, it requests the Government to furnish more detailed information on the consultations undertaken not only within the Tripartite Committee on Conventions, but also on each of the matters provided for in *Article 5, paragraph 1*, of the Convention.

Sierra Leone (ratification: 1985)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes that the Joint Consultative Committee has met several times to debate the new labour legislation. It wishes to recall that the tripartite consultations referred to in the Convention are essentially designed to promote the implementation of international labour standards and concern, in particular, the matters defined and set out in *Article 5, paragraph 1, of the Convention*. The Committee therefore requests the Government to supply

full and detailed information on any tripartite consultations held, including their frequency, on the subject of:

(a) government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference;

(b) the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution of the International Labour Organization;

(c) the re-examination at appropriate intervals of unratified Conventions and Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;

(d) questions arising out of reports to be made to the International Labour Office under article 22 of the Constitution of the International Labour Organization;

(e) proposals for the denunciation of ratified Conventions.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Spain (ratification: 1984)

The Committee notes the comments formulated by the General Union of Workers (UGT) in its communication addressed to the ILO in January 1998, a copy of which was transmitted to the Government. The UGT emphasizes that the Government has made considerable effort to communicate the reports due under article 22 of the ILO Constitution to the representative organizations. However, the time-limits granted to organizations are too short to ensure effective consultations. The UGT, moreover, reiterates its previous comments concerning the lack of consultations on the re-examination of the unratified Conventions, as provided for under *Article 5, paragraph 1(c), of the Convention*. The Committee refers to its previous observation, in which it recalled that in the General Survey of 1982, it distinguished the simple exchange of information from consultation which constitutes a process assisting in decision-making (paragraph 42) and requests the Government to respond, where it deems appropriate, to the comments made by the UGT. The Committee also requests the Government to provide detailed responses in its next report to the questions raised in its previous observation which read as follows:

> The Committee notes the comments received from the Trade Union Federation of Workers' Commissions (CC.OO.) in May 1995 and from the General Union of Workers (UGT) in July 1995. The Committee also notes the Government's report, received in August 1995, which refers to the comments made by the UGT and provides information in response to the Committee's previous observation.
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> 1. The Committee notes that the General Union of Workers (UGT) reiterates its previous comments, alleging that the Government still does not hold effective consultations on ILO standards and activities. In particular, the UGT denounces the lack of consultations on the re-examination of unratified Conventions (*Article 5, paragraph 1(c) of the Convention*) and the difficulties encountered in holding effective consultations on the Government's reports due under article 22 of the ILO Constitution (*Article 5, paragraph 1(d)*). The workers' committees consider that the Economic and Social Council is not an appropriate body to supervise the application of the Convention and that the trade unions have not been consulted on the required procedures. The CC.OO. recalls in particular that *Article 2* of the Convention lays down the obligation to ensure effective consultations which, under the terms of *Article 5, paragraph 2*, shall be undertaken at appropriate intervals fixed by mutual agreement.
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> 2. The Committee notes the Government's statement in its report that it is ready to find any solution that resolves the practical problems of application raised. The Government emphasizes that it has established direct personal contacts in order to ensure that all written

communications are received by the competent bodies of all the social and economic organizations. It also refers to a possible change in the system of consultation, provided that this is explicitly accepted by all the parties involved.

3. The Committee recalls that the Convention lays down that the nature and form of the consultation procedures shall be determined in accordance with national practice. Member States are obliged only to ensure that they are "effective", as required by *Article 2, paragraph 1*. With reference to its General Survey, the Committee points out once again that effective consultations are consultations which enable employers' and workers' organizations to have a useful say in matters relating to the activities of the ILO referred to in the Convention and the Recommendation. In the case under consideration, it observes that the above-mentioned workers' organizations do not consider written communications to be sufficient to give full effect to the provisions of the Convention. In these circumstances, and taking into account the positive attitude of the Government, the Committee considers it appropriate to suggest that the parties concerned would study the other possible methods proposed by Recommendation No. 152, though the list of such methods is not exhaustive. In addition, the Committee also recalls that *Article 6* provides for the issue of an annual report on the working of the procedures "when this is considered appropriate after consultation with the representative organizations".

4. The Committee trusts that the Government will supply, in its next detailed report on the application of the Convention, information on the progress achieved with a view to operating appropriate procedures in order to ensure effective consultations to the satisfaction of all the parties concerned, taking into account the observations made, on the one hand, and the national practice, on the other hand.

The Committee requests the Government once again to take the measures necessary, as soon as possible, to bring its practice into full conformity with the essential provisions of the Convention.

Suriname (ratification: 1979)

The Committee takes note of the Government's brief report which covers the period ending in September 1998 and provides some information in reply to the Committee's previous direct request. However, the Committee notes once again that the Government has supplied no information that would allow it to assess the manner in which effect is given to the fundamental provisions of the Convention, and indicates only that the Convention is applied in a satisfactory manner. The Committee recalls that it has been asking the Government since 1993 to provide information on the application of *Article 5 of the Convention*, and once again asks it to supply full and detailed information on the consultations undertaken by the Labour Advisory Board, and in particular by the Tripartite Subcommittee for the ILO, on the issues set out in *Article 5, paragraph 1*, on the frequency of these consultations and, where appropriate, on the nature of any reports or recommendations resulting from them. In this regard, the Committee wishes to draw the Government's attention to the fact that certain subjects (replies to questionnaires, submissions to the competent authorities, reports to be presented to the ILO) require annual consultations, while others (re-examination of unratified Conventions and Recommendations, proposed denunciation of ratified Conventions) require less frequent examination.

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In addition, requests regarding certain points are being addressed directly to the following States: ***Algeria, Barbados, Belarus, France, Guinea, Ireland, Latvia, Lithuania, Malawi, Nepal, Nicaragua, Philippines, Sao Tome and Principe, United Republic of Tanzania, Turkey, Uganda.***

Convention No. 145: Continuity of Employment (Seafarers), 1976

Netherlands (ratification: 1979)

1. Further to its previous comments, the Committee notes the information supplied by the Government in its last report. The Government states again that employment and the conditions therein are subject to the collective labour agreement, that is an agreement between the Royal Dutch Shipowners' Federation and the seafarers' trade union (FWZ), or the agreement made between the individual shipping company and the FWZ when the company involved is not a member of the shipowners' federation, and therefore the collective labour agreement is not binding. The Government confirms that its policy is not aimed at promoting permanent employment for seafarers, but that if a seafarer who is eligible to Dutch social legislation is temporarily without employment, he is entitled to unemployment benefit. The Committee notes this statement but points out that the compliance with the Convention requires that there be a national policy with respect to encouraging provision of continuous or regular employment for qualified seafarers as well as assuring minimum income or a monetary allowance. It again draws its attention to the responsibility which the Government has in relation to all seafarers, whether nationals or otherwise, under *Articles 2, paragraph 2, and 3 of the Convention*, to take measures to encourage continuous or regular employment of seafarers.

2. The Committee welcomes the information provided by the Government in its report indicating that a scheme for non-Dutch/non-European Union officers, similar to the Maritime Shipping Employment Agreement (RAZ) for ratings, was forwarded for approval to the Minister of Social Affairs by the social partners at the beginning of 1998. The Committee trusts that, in its next report, the Government will provide further information on the above-mentioned scheme, including particulars on the number of seafarers and of variations in their number during the period covered by the report, as requested under *Part V of the report form*.

3. Lastly, the Committee reiterates its earlier request for the Government to describe any other measures taken or envisaged to encourage continuous employment for all seafarers and the efforts made to give effect to *Article 2* with regard to seafarers not covered by the Maritime Shipping Employment Agreement (RAZ) concluded by the social partners.

New Zealand (ratification: 1980)

In its previous comments, the Committee took note of the observations received in 1994 from the New Zealand Council of Trade Unions which expressed concern about the conformity of the Maritime Transport Act, 1996, with this Convention. The Government in its recent report indicates that it is not involved in administering seafarers' employment arrangements or prescribing minimum periods of employment or levels of remuneration, except as provided under the minimum wage, which applies to all employment relationships, under the terms of the minimum code of employment. These matters are negotiated between employers', seafarers' and workers' organizations under collective agreements. The Government reiterates that all seafarers are employed on contracts providing unbroken service which in effect provides seafarers with continuous pay, irrespective of the amount of sea service performed.

The Committee notes this statement but points out that the compliance with the Convention requires that there be a national policy with respect to encouraging provision of continuous or regular employment for qualified seafarers as well as assuring minimum income or a monetary allowance. It again draws its attention to the responsibility which the Government has in relation to all seafarers, whether nationals or otherwise, under *Articles 2, paragraph 2, and 3 of the Convention*, to take measures to encourage continuous or regular employment of seafarers. The Committee trusts that, in its next report, the Government will provide further indications on the efforts made to ensure continuous or regular employment for seafarers, including particulars on the number of seafarers and of variations in their number during the period covered by the report, as requested under *Part V of the report form*.

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In addition, requests regarding certain points are being addressed directly to the following States: *Hungary, Portugal*.

Convention No. 146: Seafarers' Annual Leave with Pay, 1976

Requests regarding certain points are being addressed directly to the following States: *France, Iraq, Kenya, Morocco, Nicaragua*.

Convention No. 147: Merchant Shipping (Minimum Standards), 1976 [and Protocol, 1996]

Italy (ratification: 1981)

The Committee notes the information contained in the Government's reports of 1996 and 1998 as well as the discussions which took place within the Conference Committee of 1995.

Article 2(a) and (i) of the Convention. In its previous comments, the Committee had requested the Government to take the necessary measures to ensure that appropriate legislative provisions or regulations are adopted in order to give effect to this provision of the Convention. The Committee notes that during the Conference Committee the Government had not deviated from the previous opinion that it had expressed, namely that the hours of work on board vessels are governed by detailed and comprehensive collective agreements which guarantee the safety of vessels and their crew and that legislative provisions are not required. In its successive reports the Government has provided no new information. The Committee recalls that each Member which ratifies the Convention undertakes to have laws and regulations laying down, for ships registered in its territory, security standards including standards of hours of work and manning, so as to ensure the safety of life on board ship. The Committee trusts that the Government will take the necessary measures to ensure that appropriate legislative provisions or regulations are adopted.

Article 2(f). The Committee notes the Government's statement in its report of 1996, reiterated in its report of 1998, relative to the system of inspection (central and regional committees) established under the provisions of Act No. 1045 of 1939 and the inspection visits carried out between October 1995 and May 1996. The Committee requests the Government to provide details in respect of the information obtained from these inspection visits concerning the quality and number of inspections carried out and the measures taken as a consequence to verify the application of the standards referred to in this provision of the Convention. The Committee notes the relatively small number of inspection visits carried out during the period (16) and the absence of more recent statistical information.

It requests the Government to provide detailed information in respect of the inspection visits carried out and the results obtained, the complaints lodged and the sanctions imposed.

Article 2(g). The Committee notes the detailed information provided by the Government in respect of the investigation procedures of marine accidents and in particular the Government's statement to the effect that a report is drawn up annually of serious marine accidents. The Committee requests the Government to provide information in respect of the number of official inquiries held and the measures taken as a result of these inquiries and to provide a copy of the above report.

United Kingdom (ratification: 1980)

The Committee notes with interest the detailed information and statistics in the Government's report as well as the reports of the Marine Accident Investigation Branch and copies of the regulatory texts enacted in 1997-98.

In its report the Government has noted that *Article 2 of the Convention* does not specify either the form which laws or regulations should take, or the manner in which they should ensure the safety of life on board ship. The Committee recalls that while the means to be employed are left in large part to the ratifying State to decide, the wording of the Convention ("to ensure the safety of life on board ship") is unequivocal in placing compliance at the highest level. The Committee will now consider this having regard to paragraphs 80-84 of its 1990 General Survey on labour standards on merchant ships.

The Committee, therefore, recalls its previous comments concerning the enactment of laws or regulations laying down safety standards, including but not limited to those relating to hours of work, so as to ensure the safety of life on board ship.

The Committee recalls that Regulation 7(1) and (2) of the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997 (hereinafter "Regulations") is entitled *General duty of company, employers and masters*, which sets forth the standards applicable in non-emergency situations. The Regulation requires that, *so far as is reasonably practicable*, the company shall ensure that the master, who in turn shall ensure that the seamen do not work more hours than is safe in relation to the safety of the ship and the master's and seamen's performance of their duties. The master's duty to ensure that, *so far as is reasonably practicable*, the hours of work specified in the schedule are not exceeded, is restated in Regulation 9(9), *Schedules of duties and need to record*. The Committee notes in particular that these Regulations concern normal circumstances, and that Regulation 7 is subordinated to Regulation 10 (*Exception for emergencies*). In its report the Government notes the Committee's comments and makes the point that there will be occasions "due to circumstances beyond control" when deviations from the schedule of duties will be necessary.

The Committee with regard to this matter considers that there is a fundamental distinction to be made between standards to *ensure* safety in non-emergency situations, such as those covered in Regulation 7, and the exceptional measures which may be taken in emergencies (Regulation 10).

The Committee, moreover, takes note that the Regulations appear to recognize this distinction; however, the more flexible notion of reasonable practicability appears *not* in the Regulation on emergencies, but in the Regulation on general duties. Thus the requirement under *Article 2* of the Convention to *ensure safety* is not met when a general duty is held only to a standard of "so far as is reasonably practicable".

The Committee considers that the applicable legal standard which may justify deviating from schedules of duties set to ensure the safety of life on board ship is that of *force majeure*: events which are unforeseeable, irresistible, and external. *Force majeure* effectively suspends the obligation for the duration of the emergency. The Committee recalls, in particular, that the concept of *force majeure* is circumscribed: emergencies caused in whole or in part by human factors (acts or omissions) do not fall within its scope. For these reasons, the Committee considers that any diminution of standards set to ensure safety fails to fully apply *Article 2* of the Convention.

The Government's report draws the Committee's attention to the existence of sanctions set forth in Regulations 16 and 17 for any company, master or seaman who is found to be in breach of specified Regulations. The Committee considers, however, that since Regulation 17(10) incorporates the standard of reasonable practicability as a defence in proceedings for failure to comply with a duty or requirement under these Regulations, the penalties provisions suffer from the same defect as the rest of the text with regard to ensuring the safety of life on board ship. Therefore, the Committee hopes that the Government will review these Regulations with a view to bringing them into conformity with the Convention.

The Committee has taken note that representative organizations of United Kingdom seafarers and shipowners have been consulted concerning the ratification of the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), and that following tripartite consultations in 1998 the Government will announce its proposed course of action with regard to the Convention.

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In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Croatia, Finland, Italy, Kyrgyzstan, Netherlands, Russian Federation, Spain, Sweden, Tajikistan, Ukraine*.

Convention No. 149: Nursing Personnel, 1977

Requests regarding certain points are being addressed directly to the following States: *Guatemala, Latvia*.

Convention No. 150: Labour Administration, 1978

Requests regarding certain points are being addressed directly to the following States: *Belarus, Jamaica, United States*.

Convention No. 151: Labour Relations (Public Service), 1978

Uruguay (ratification: 1989)

The Committee notes the Government's report and its comments on the report presented by the Confederation of State Officers' Organizations (COFE) in June 1997.

Article 4 of the Convention. The Committee notes COFE's statement that, during 1997, several incidents of trade union persecution occurred in the public service. In particular, COFE states that disciplinary measures had been taken against trade union leaders of the Federation of Public Health Employees and the Federation of Highway workers by the administrative authority, including the non-payment of wages and transfers for reasons of exercising trade union activities. The Committee notes the Government's statement to the effect that, in respect of the allegations made, the administrative authorities have decided not to continue with the disciplinary proceedings. In respect of the allegations of transfers of trade union leaders as reprisals for their trade union activities, the Committee notes that the COFE has not provided sufficient detail in this respect (the number of employees affected, the dates of transfers and the names of institutions in which the transfers occurred) upon which an assessment of these allegations can be made.

Article 7 of the Convention. The Committee notes COFE's statement that, on 1 January 1996, Parliament adopted Act No. 16736 issuing the budget, which affects the working conditions of thousands of officials. In particular, COFE raises objections to certain provisions relating to staff and job redundancies and the establishment of a system of quotas for qualifications. COFE also states that the Act establishes a permanent Industrial Relations Committee for the central administration and other public bodies. COFE expresses objections to the composition of this body and also states that although the permanent Industrial Relations Committee has the responsibility of advising on wage issues, in practice, the representatives of the executive have refused to cover other matters related to conditions of employment. COFE also asserts that the functioning of this committee has proved to be totally inoperative.

In this respect, the Committee notes that the Government states that Act No. 16736 of 5 January 1996, issuing the budget, has contributed significantly to public sector reforms. In particular, the Government states that, as part of the reform process and subsequent to the passing of the above Act, many decrees have been issued whose purpose is to restructure the central administration, the system of evaluating performance, the system of promotion, the highly specialized functions and redundancies schemes. In this respect, the Committee notes the Government's indication that the process of public sector reforms is in conformity with the Constitution and the laws of the Republic and that it has involved those concerned in a "permanent dialogue" with public officials. The Government does not, however, detail the process which gave rise to the adoption of the above Act and decrees, which modify certain conditions of employment and careers for public officials. Moreover, the Committee also notes that neither COFE nor the Government have indicated whether consultations were held with sectoral trade union organizations prior to the adoption of the Act.

In these circumstances, the Committee recalls that *Article 7* of the Convention provides that appropriate measures shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for negotiation of terms and conditions of employment between the public authorities concerned and the public employees' organizations, or of other such methods as will allow representatives of public employees to participate in the determination of these matters.

Moreover, the Committee notes that, in respect of COFE criticisms concerning the composition, scope and failure of the permanent Industrial Relations Committee to function properly, the Government: (1) emphasizes that the above-mentioned committee has responsibility for advising on and providing information on salaries and other matters covered by international labour Conventions. The Government states that, for example, in matters pertaining to wages, public sector workers' representatives prepared a report on the evolution of salaries in real terms from 1985 to 1996 and presented it to the above-mentioned committee, which also received a similar report produced by the executive's experts; (2) details its participation in resolving various conflicts and states that the above-mentioned committee has acted with regard to various public organizations and institutions and has contributed to restoring dialogue and labour relations and provides other such examples; and (3) states that public sector employees are addressing several issues to the permanent Industrial Relations Committee which had been addressed to the Sectoral Committee on State Reform but were subsequently withdrawn.

The Committee considers firstly that the composition of the permanent committee (five members: two representatives of the executive, one from the Ministry of Economy and Finance and one from the Office of Planning and Budget, two representatives from the most representative organizations of public officials and one from the Ministry of Labour and Social Security), which is de facto a joint committee, appears to be unsatisfactory due to an imbalance between the representatives of the authorities and the most representative trade union organizations. However, according to the comments made by COFE, it appears not to enjoy the confidence of these organizations. In these circumstances, the Committee requests the Government to examine the possibility of modifying the composition of the permanent Industrial Relations Committee and to inform it accordingly.

Secondly, the Committee notes that, in accordance with section 739 of Act No. 16736, the competence of the permanent Industrial Relations Committee is not restricted to advising on matters of wages, but also covers "advising on conditions of employment and matters covered by international labour Conventions". However, in the Committee's view, the broader statutory competence which appears to be restricted in practice to providing advice on conditions of employment and mediation is unsatisfactory.

Finally, the Committee notes that in a previous direct request it had noted that the Government had provided assurances to the effect that a number of important collective agreements had been concluded in public institutions. In this respect, the Committee requests the Government to inform it, in its next report, on the procedures which enable public employees' representatives to participate in determining the terms and conditions of employment for public employees, as well as their contents and the territorial and personal scope of the collective agreements concluded in the public administration during the period covered by the report.

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Requests regarding certain points are being addressed directly to the following States: *Greece, Turkey.*

Convention No. 152: Occupational Safety and Health (Dock Work), 1979

Finland (ratification: 1981)

1. Further to its previous observation concerning earlier comments made by the Central Organization of Finnish Trade Unions (SAK), the Committee notes the information that inspection systems at ports and industrial workplaces have been subject to reform. It notes that dock work inspections and the qualifications required of persons performing them have been revised, on the basis of proposals drawn up following tripartite negotiations, and that the revised competence requirements contained in Decisions 744/1986 and 341/1998 entered into force on 1 June 1998.

The Committee notes the comments made by the SAK, communicated by the Government, in which it states that the reliability of lifting device inspections should be improved. It indicates that accidents and near-miss cases have occurred even when a ship's lifting appliances had been inspected according to the attestations and were in good condition. Likewise, the loose lifting gear, cables and belts forming part of a ship's equipment have often proved to have lifting straps unfit for this purpose, even when they had supposedly been properly inspected. The SAK added that the application of several different safety regulations (concerning road, rail and sea transport) may also cause dangerous situations and reduce safety. In addition the SAK states that dock work involves employees of several different employers and the numbers of actors at ports has increased. Cooperation between the different actors occasionally suffers from problems and friction which may affect employee safety and health.

The Committee would be grateful if the Government would provide information on these comments made by the SAK and on any improvement resulting from the recent reforms introduced in the inspection services at ports.

2. The Committee notes the comments made by the SAK, communicated by the Government, in which the SAK states that it has been difficult to obtain statistical data on occupational accidents in dock work, because the statistics are compiled using broader categories. The SAK considers that this means that it is difficult to achieve a clear view of the trend in accident occurrences. The Committee notes from the Government's report under *point V of the report form*, that no statistics on occupational accidents and diseases sustained by dockworkers in particular are available because of the statistical categories applied, while acknowledging that dock work was known to be one of the most dangerous occupations.

The Committee recalls that *Article 39 of the Convention* calls for measures to be taken to ensure that occupational accidents and diseases are reported to the competent authority and, where necessary, investigated in order to assist in their prevention. It also recalls that the report form, under point V, calls for the supply of information on the number of occupational accidents and diseases reported, in so far as this information has not already been supplied in connection with other questions in the form. Given the highly dangerous nature of dock work, the Committee would be grateful if the Government would keep it informed on the measures taken or envisaged to collect and report statistics on occupational accidents and diseases more specifically for dock work, thus facilitating their prevention.

Peru (ratification: 1988)

The Committee notes the comments made by the Dockers Union of the port of Mayor de Callao in which the Union indicates that occupational accidents including many deaths have increased at an alarming rate, due to the non-observance of labour standards not only with regard to holidays and rest periods but also due to the extra work done by dockers compensating for the inexperience of new dockers. The Committee notes from the Government's reply that by virtue of section 25 of the Constitution of Peru, Legislative Decree No. 713 and its implementing regulations in Supreme Decree No. 012-92-TR, and sections 1 and 7 of Legislative Decree No. 854 (the eight-hour day and 48-hour week allowing for weekly rest and paid annual holidays, and midday breaks for meals are provided for) unless a shorter working day is provided for by law, agreement or unilateral decision of the employer. The Committee notes that, in any case, the problems complained about by the Dockers Union of the port of Mayor Del Callao do not refer to the inexistence of laws or regulations as much as they refer to their application, and as a result the application of the relevant provisions of the Convention. The Committee would be grateful if the Government would provide indications on the measures taken or envisaged to ensure compliance with national legislation as well as the relevant provisions of the Convention.

The Committee would be grateful if the Government would provide information on the question of the inexperience of new dockers raised by the Dockers Union which it considers to have resulted in longer working time for the more experienced dockers, bearing in mind *Articles 4, paragraphs 1(c), 2(r), and 7, paragraph 2, of the Convention.*

Sweden (ratification: 1980)

The Committee notes the information provided by the Government in reply to its previous comments referring to the remarks made by the Swedish Trade Union Confederation (LO), and the copies of the Dock Work (Amendment of Dock Work Directions) AFS 1993:47 and the Dock Work (Amendment of Dock Work Directions) AFS 1994:20, supplied with the Government's report.

Article 21 of the Convention. Further to its previous comments relating to the remarks of the LO concerning the repeal and non-replacement of Notice 1976:19, the Committee notes the Government's reply confirming its repeal but that those rules were solely of the nature of recommendations and were partly out of date. The Government indicates that the contents of these rules are now covered to all intents and purposes by the Swedish Standard IKH 5.52.01. The Committee would be grateful if the Government would supply a copy of the Swedish Standard IKH 5.52.01.

Article 17. The Committee notes the Government's reply to its previous comments which related to the remarks of the LO that dockworkers were obliged to use an ordinary ladder or a personal basket connected to a lifting device in place of ladders or access to a ship's hold or cargo deck when such access were obstructed. The Committee notes the information that hoisting of personnel by cranes and other lifting devices is dealt with in AFS 1983:5, Hoisting of Persons by Cranes and Other Lifting Devices, and that hoisting of personnel with trucks is dealt with in AFS 1986:24, Trucks, the copies of both instruments are enclosed with the Government's report. In addition the Government indicates that these instruments make provision concerning inspection by an accredited control body of temporary personnel hoists using cranes and trucks, which it considers meet the requirements of *Article 17, paragraph 1.*

Article 39. The Committee notes the comments made by the LO contained in the Government's report, indicating that due to reasons such as a demand for an increased productivity and efficiency in dock work together with a continuous unemployment, stress related to work has increased. It considers that the desire of stevedore companies to cut down the organization has also added to the stress. It concludes that because of the fear of losing their jobs, dockworkers do not report near-accidents and incidents as usual. The Committee would be grateful if the Government would provide its views on this, bearing in mind that *Article 39* of the Convention requires that, in order to assist the prevention of occupational accidents and diseases, measures have to be taken to ensure that they are reported to the competent authority and, where necessary, investigated.

The Committee also notes the comments made by the LO concerning the lack of clarity in Swedish legislation as to whether the regulations for transport of hazardous goods are in force for dock work. The LO indicates that in practice, in most of the docks, the regulations for the transport of hazardous goods — "ADR regulations"— are not applied. With a view to clarifying its doubts, the LO is asking whether the transport roads in a dock area are to be considered as public roads intended for transport of hazardous goods. Such clarification will answer its question of whether dockworkers must have an "ADR certificate" in order to handle and transport hazardous goods, which certificate is required for transport of hazardous goods on shore. It is obtained after a special "ADR course" concerning transport of hazardous goods.

The Committee considers this question to concern the meaning of provisions of national legislation. Without pronouncing itself on the question of the meaning of provisions of national legislation on the matter, the Committee wishes to indicate that the following provisions of Convention No. 152 may be usefully kept in mind in addressing the question: *Article 1* which includes any work incidental to the work of loading and unloading any ship within the definition of "dock work"; *Article 4, paragraph 2(l),* which provides for the measures to be to taken in pursuance of this Convention to cover dangerous substances and other hazards in the working environment; *Article 10, paragraph 1,* which, not being limited to dangerous goods, requires that all surfaces used for vehicle traffic to be suitable for the purpose and properly maintained; *Article 11, paragraph 1,* which, also not being limited to dangerous goods, requires that passageways of adequate width to be left to permit the safe use of vehicles and cargo-handling appliances; and *Article 32, paragraphs 1 and 2,* which require the packing, marking and labelling, handling, storing and stowing of any dangerous cargo to be in accordance with the relevant requirements of international regulations applying to the transport of dangerous goods by water and those dealing specifically with the handling of dangerous goods in ports.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Iraq, Peru.*

Information supplied by *Finland* in answer to a direct request has been noted by the Committee.

Convention No. 153: Hours of Work and Rest Periods (Road Transport), 1979

Ecuador (ratification: 1988)

The Committee notes the Government's report and the elements of information provided in reply to its previous comments. The Government states that it is currently giving priority to the reconstruction of the national road infrastructure destroyed during the climatic phenomenon El Niño. It has therefore deferred the adoption of the necessary measures to give effect to the provisions of the Convention until the completion of this reconstruction phase.

The Committee hopes that the Government will, once this phase of reconstruction is completed, be able to envisage the manner in which it can give effect to all the provisions of the Convention, and particularly the formulation of legislation on national and international land transport with the technical assistance that it has requested from the ILO. In these conditions, the Committee hopes that the Government will be able in the near future to provide the information that has been requested for many years on the manner in which the Convention is applied in both national law and practice.

The Committee also requests the Government to provide its comments at the same time, in so far as it considers it appropriate, in reply to the observations made by the Ecuadorean Central Organization of Class Organizations respecting the absence of mechanisms to monitor the application of the Convention.

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Information supplied by *Venezuela* in answer to a direct request has been noted by the Committee.

Convention No. 154: Collective Bargaining, 1981

Argentina (ratification: 1993)

The Committee takes note of the comments of the Union of Press Workers of Buenos Aires (UTPBA) concerning the repeal on 16 June 1998 of the Conditions of Service of professional journalists and of the Conditions of Service of administrative employees of newspaper companies and requests the Government to send its comments on the matter to allow it to examine these comments at its next meeting.

The Committee also takes note of the recently adopted Act No. 25013 establishing amendments to certain provisions governing employment contracts and to certain laws and current rules governing collective labour agreements, and observes that sections 13 and 14 of the Act stipulate as follows.

> Section 13. The Ministry of Labour and Social Security is to set up a mediation and arbitration service following consultations with the most representative employers' organizations and with the General Confederation of Labour; the service will intervene in collective disputes at the request of the parties concerned.
>
> Section 14, paragraph 1. Representation of workers in negotiations on collective labour agreements of whatever type will be the responsibility of higher-level trade union associations which will be able to delegate their power to negotiate to their decentralized structures.

The Committee considers that some of these provisions may present problems in relation to the Conventions ratified by Argentina and proposes to examine them in greater depth next year as part of its examination of the application of Convention No. 98 within the regular reporting cycle.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Greece, Guatemala, Hungary, Lithuania, Suriname, Ukraine*.

Convention No. 155: Occupational Safety and Health, 1981

Brazil (ratification: 1992)

I. Further to its previous comments, the Committee notes the Government's reply to the observations made by the Union of Workers of the Chemical, Petrochemical, Pharmaceutical, Paints and Varnishes, Plastics, Synthetic Resins, Explosives and Similar Industries of ABC and its affiliates, the Association of Workers Occupational Contaminated by Organo-chlorates. It notes that verification has been made regarding the implementation of the tripartite agreement as regards health and safety measures for the workers, including the compensation measures, with the participation of the authorities, the company and the trade union.

II. The Committee notes the text of Law No. 6.514 of 22 December 1977, Order (Portaria) No. 3.214 of 8 June 1978 and its various implementing regulations, and Order (Portaria) No. 3.067 of 12 April 1988 and its implementing regulations.

III. *Article 9 of the Convention*. 1. The Committee recalls that in their earlier comments, the unions had referred to the significant increase in the total number of occupational accidents, including fatal accidents, citing press reports indicating an increase of 26.8 per cent in 1995. The Committee also recalls its previous comments where it drew the Government's attention to the observations of various trade union organizations alleging a lack of efficiency in the system of inspection which, under *paragraph 1* of this Article must be adequate and appropriate to enforce laws and regulations concerning occupational safety and health and the working environment. The said organizations contended that the sanctions for breaches of the laws and regulations laid down in section 19 of Decree No. 55.841 of 15 March 1965 as amended by Decree No. 97.995 of 26 July 1989, which, according to *Article 9, paragraph 2,* of the Convention must be adequate, were not always applied by inspectors.

2. Further to its previous comments, the Committee notes the information concerning case No. 46255-1470/97-41, initiated by the Union of Workers of the Food Industries of Jundiai, Cajamar, Campo Limpo Paulista, Louveira, Itupeva, Varzea Paulista and Vinhedo, the Union of Workers of the Print Industries of Jundiai and the Union of Workers of the Mechanical and Electrical Material Industries of Jundiai, Varzea Paulista and Campo Limpo Paulista, against the civil servants of the Ministry of Labour for illegal acts committed in the exercise of their duties. On the one hand the Committee notes that, the decision in the case against the civil servants for administrative wrongs they committed indicates that, sanctions could not be imposed on them not because of the unsubstantiated nature of the trade unions' complaint, as indicated by the Government in its report, but because of prescription. On the other hand, the Committee notes that, according to the information from the Directorate of Occupational Safety and Health of the Ministry of Labour, for the whole area of Jundiai which has approximately 500,000 inhabitants and about 60,000 enterprises, there are in all only two engineers and one safety official. Despite this, the number of visits made by these officials is more than the average.

3. The Committee would be grateful if the Government would provide further information on the functioning of the inspection services responsible for the enforcement of laws and regulations concerning occupational safety and health and the working environment, and on the enforcement of the sanctions established for breaches of the legislation as well as the measures taken or envisaged to increase the number of officials of the inspection services, in particular in the areas with major industrial concentration and resulting problems. In addition the Committee would be grateful if the Government would provide where statistics exist, information on the number of workers covered by the legislation, the number and nature of contraventions reported, the number, nature and cause of accidents reported, etc., as required by *point V of the report form*.

IV. Further to its observation of 1996 (point 1) referring to the comments made by the Union of Fishermen of Angra dos Reis, the Committee recalls that the Convention applies to all workers in all branches of economic activity (*Article 2, paragraph 1)* and that the coherent national policy on occupational safety, occupational health and the working environment provided for in *Article 4* must include a strategy for the various branches of economic activity, including fishing. The Committee hopes that the Government will be in a position to indicate in the near future all the new measures that have been taken to prevent employment accidents in fishing and requests it to supply information on the progress achieved in this respect.

V. Further to its observation of 1996 (point 2) referring to the comments made by the Union Federal Public Service Workers of the State of Goiàs (SINDSEP-GO), dated

1 March 1996, the Committee requests the Government to provide detailed information on how effect is given to the provisions of the Convention in the activities carried out in the Ministry of Agriculture laboratories in the State of Goiàs and in other enterprises where workers are exposed to the risk of poisoning by chemical and biological substances and agents.

Croatia (ratification: 1991)

1. Further to its observation of 1995bis concerning the comments of the Union of Autonomous Trade Unions of Croatia (UATUC) regarding section 59 of the Health Insurance Act and the question of the reduction of health protection to emergency medical aid for those who contribute but fail to pay their contribution, the Committee notes from the Government's report that it has replied under the Social Security (Minimum Standards) Convention, 1952 (No. 102). The Committee will continue to follow up the question under Convention No. 102.

2. *Articles 1 and 2 of the Convention.* The Committee notes the comments made by the UATUC in 1998 that, even though the Labour Inspection Act makes the labour inspection responsible for the supervision of the application of the occupational safety and health rules, it does not provide for how many inspectors shall be authorized for such supervision. The UATUC states also that, while no economic activities have been exempted by the Law on Labour Inspection, the same Law does not say explicitly which economic activities shall be "covered" by labour inspectors.

The Committee notes the Government's reply that section 5 of the Labour Inspection Act provides that the number of inspectors in branch offices is established in accordance with the number of employees, and there is as a rule one inspector per 4,000 employees. In this regard, it states that 60 new inspectors were admitted during 1997 which brings the total number of inspectors currently to 380, out of which 187 are in charge of labour relations and 193 in charge of safety and health. It adds that for 1999, a further 60 new inspectors will be employed, as result of which the situation regarding the number of inspectors should considerably improve.

The Committee also notes the information that labour inspection exercises supervision over the application of labour legislation in all sectors, with the exception of the armed and police forces. The supervision over the application of occupational safety and health legislation is exercised by the labour inspection in all activities except in mining where such supervision is exercised by the mining inspection.

The Committee hopes that, with these measures, the situation of occupational safety and health inspection will meaningfully improve. It requests the Government to continue to provide indications on further developments in this regard.

3. *Articles 4, 5, and 15.* The Committee notes the comments of the UATUC concerning the Government's failure to carry out its intention to establish the National Council for Occupational Safety and Health whose members are to be representatives of the State, employers and workers, as well as prominent experts dealing with occupational safety and health. It also indicates that the Government does not give reasons why the council has not yet been established nor when it will be.

The Committee notes the Government's reply acknowledging that the council has not yet been established but that it will be in early 1999. Please provide particulars on developments in this respect.

The Committee hopes the Government will soon be in a position to report on the establishment of the National Council for Safety and Health.

4. *Article 11(f).* The Committee notes the comments of the UATUC that the Government does not mention that, pursuant to section 88 of the Occupational Safety and Health Act, it was supposed to establish the Institute for Occupational Safety and Health within the Labour Ministry in order to monitor and advance occupational safety and health. To the knowledge of the UATUC no such institute has been established so far.

The Committee notes the Government's reply that the Croatian Government's Decree on Internal Organization of the Ministry of Labour and Social Welfare, adopted on 28 April 1998, provides for the establishment of the Occupational Safety and Health Administration as an organizational unit within the Ministry. The Rules on Internal Organization of the Ministry of Labour and Social Welfare to be established in accordance with this Decree by the Minister also provides for the establishment of the said administration. It further indicated that the rules will be adopted by the end of 1998, but the recruitment of new civil servants for the administration and its beginning operations have been postponed for financial reasons.

The Committee hopes that the financial situation will improve sufficiently to enable the Government to set up in the near future the Institute for Safety and Health and the National Council for Occupational Safety and Health. Please provide indications on any developments in this regard.

5. *Article 9.* The Committee notes the comments of the UATUC that there have been no cases of labour inspectors inspecting merchant ships which are under the national flag. The trade union has never been consulted on the problems of occupational safety and health of seafarers and dockers and that such inspections on board ships and in harbours have been left to trade union inspectors who receive no support either from the Government or the shipowners. Between 12 and 16 May 1997, the Seafarers' Trade Union of Croatia and the Dockers' Trade Union of Croatia inspected ships in Croatian harbours irrespective of their flag, with particular attention being paid to safety and health. The Ministry of Labour and Social Welfare inspectors did not get involved in the action. As a follow up, another such inspection of occupational safety and health conditions of dockers in the harbour of Rijeka was planned for December 1997.

The Committee notes the Government's reply that the supervision of ships under the national flag is not left only to trade union inspectors, but that labour inspectors have exercised such supervision even though inadequately due to their small numbers. It adds that labour inspectors exercise supervision with respect to occupational injuries sustained in Croatian ports. The Government indicates that during the reporting period, a Seminar on Inspection of Ships in Accordance with ILO Convention No. 147 was held in April 1997 in Lovran, attended by labour inspectors, safety of navigation inspectors from the Ministry of Maritime Affairs, representatives of trade unions and employers. Moreover, in accordance with the Maritime Code, the Rules on Carrying Out Safety of Navigation Inspection (*Official Gazette* No. 34/97) that specify that safety of navigation inspectors are also competent to carry out safety and health legislation inspection has been adopted. The Government however acknowledges that, with respect to the application of safety and health regulations, it is necessary to establish a better cooperation with both employers and trade unions.

The Committee notes with interest the Government's desire to improve the cooperation with employers and trade unions in the application of safety and health regulations. It would be grateful if the Government would take the necessary measures to ensure that the enforcement of safety and health laws and regulations, including on board ships and in dock work, is secured by an adequate and appropriate system of inspection. Please provide particulars on developments in this regard.

6. The Committee notes the adoption of the Law on Occupational Safety and Health (*Official Gazette* Nos. 59/96 and 94/96) and the Law on Labour Inspection (*Official Gazette* No. 59/96). It proposes to examine them in detail at its next session.

Czech Republic (ratification: 1993)

The Committee notes the Government's reply to its previous comments referring to the observations made by the Czech-Moravian Chamber of Trade Unions (CMKOS). These comments concerned the following matters: the absence of a worked-out constructive state policy of occupational safety and health to ensure compliance with the Convention; the failure of the draft document on state policy on this matter to define a basic concept of the policy, the role of the State and those of the social partners, and its failure to indicate measures contemplated at the national and regional levels; the failure of the draft law on occupational safety and health to take account of the amendments suggested by the social partners on the absence of measures at the national, regional and company levels; and the weakening of the unions' role in representing employees in matters of occupational safety and health at the national and company levels.

The Committee recalls that it had requested the Government to reply to the comments of the CMKOS and to indicate the measures taken or envisaged to formulate and implement a coherent national policy *(Article 4 of the Convention)*. The Committee notes from the Government's reply that the draft Paper on state policy which was discussed by the Government in April 1995 constituted an effort to formulate a comprehensive framework for the activities in the areas of safety and health at work and labour inspection. Steps which would lead to implementation of the proposed policies (such as laws on safety and health at work and labour inspection) were suspended in 1996 due to differing views on the concept of future legislation (Labour Code or Civil Code). Representative trade unions' and employers' organizations were duly consulted in this process. Views expressed and proposals made by the trade unions' and employers' organizations are currently being discussed in a new round of negotiations concerning the drafting of the new law on safety and health at work.

The Committee also notes the information that based, on Act No. 20/1966, numerous notifications and instructions were adopted by the Ministry of Health regulating industrial hygiene requirements in respect of the working environment, mobile machines, plant equipment, hygiene principles for work with chemical carcinogenic substances and lasers, procedures for the assessment of capacity to perform work, protection against poisons and other health endangering substances, etc. A draft law to replace obsolete parts of Act No. 20/1966 by reformulating basic employers' obligations in issues of preventive health care, and by determining the structures of state administrative bodies and their competences in the area of health protection is being prepared. In connection with the new law, the Ministry of Health intends to adopt implementing regulations to provide for hygiene thresholds and hygiene requirements for working conditions, health protection against effects of noise and vibrations, health protection against adverse effects of non-ionizing radiation, and a new law on chemical substances. The Committee also notes the information concerning a number of other related safety and health legislation in mines that are in preparation.

The Committee hopes that the Government will soon be in a position to adopt the laws and regulations that are in preparation and to communicate to the Office copies of the adopted texts. It also hopes the Government will, in its next report, indicate in detail the provisions of national laws, regulations and other appropriate measures that apply each provision of the Convention in accordance with the report form.

The Committee is addressing a number of other points to the Government in a direct request.

[The Government is requested to report in detail in 1999.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Czech Republic, Nigeria*.

Convention No. 156: Workers with Family Responsibilities, 1981

Requests regarding certain points are being addressed directly to the following States: *Chile, Guatemala, Japan, Yemen*.

Convention No. 158: Termination of Employment, 1982

Gabon (ratification: 1988)

Referring to its earlier direct requests to the Government, the Committee notes with interest the relevant provisions of Act No. 3/94 of 21 November 1994 (Labour Code). The Committee in particular notes with satisfaction the provisions that give effect to *Article 7 of the Convention,* by providing for an interview procedure in cases of termination of employment related to a worker's conduct or performance (section 51 of the Code), and to *Article 5(c)* of the Convention, by making it unlawful to terminate employment on the ground that a worker has filed a complaint, or participated in proceedings against an employer for alleged violation of legislation, or has had recourse to competent administrative authorities (section 74 of the Code).

The Committee is also addressing a direct request on certain points to the Government.

Portugal (ratification: 1995)

The Committee notes with interest the Government's first report in respect of the application of the Convention, which contains detailed information and the comments made by the General Confederation of Portuguese Workers (CGTP). The CGTP considers that, whilst the legislation is, in general, in conformity with the provisions of the Convention, the supervision of its application in practice is inadequate. The CGTP, in particular, states that a large number of fixed-term contracts are being concluded for permanent positions, which is an infringement of the legislation, for the purpose of evading the regulations which are applicable to termination of contracts. The CGTP also expresses its concern that purported contracts for services are being concluded to conceal a salaried employment relationship as well as the existence of illegal or clandestine labour.

In its response, the Government states that it acknowledges the existence of numerous situations of illegal labour which must be eradicated. In this respect, the Government refers to the Agreement on Concerted Strategies concluded in December 1996 with the social partners (which the CGTP refused to sign) which includes a chapter on legislative measures including prevention and supervision to be adopted in order to eradicate different forms of illegal labour. The Government states that the legislative measures envisaged under this Agreement are in the drafting stage. The Committee would be grateful if the Government could communicate the texts of such legislative measures as soon as they are adopted.

The Committee would be grateful if the Government would provide detailed information in its next report in respect of any new measures which may have been adopted in order to ensure fuller conformity with the provisions of the Convention in practice, in particular to ensure the provision of adequate safeguards, under *Article 2, paragraph 3, of the Convention,* against recourse to contracts of employment for a specified period of time, the aim of which is to avoid the protection resulting from the Convention.

A request regarding certain points is being addressed directly to the Government.

Turkey (ratification: 1995)

Referring to its previous observation, the Committee notes the Government's first report on the application of the Convention and the communication of the Confederation of Turkish Employers' Associations (TISK) a copy of which it has provided. Noting the different legislative provisions referred to in the report, the Committee notes in particular that under the terms of the Labour Act (No. 1475), an employer is only required to give a reason for dismissal in cases where that reason would exempt him from the need to give notice, and that the employer is required to give a valid reason only in the case of dismissal of a trade union delegate or representative, in accordance with the provisions of Act No. 2821 respecting trade unions. The Committee recalls in this context that an employer is under an obligation under the terms of *Article 4 of the Convention* to provide a valid reason for any termination of employment. Furthermore, it notes that the report makes no mention of any provision which would allow a worker dismissed for reasons connected with his capacity or conduct to defend himself against allegations that have been made against him, as required under the terms of *Article 7* of the Convention. Lastly, the Committee notes that the Government does not indicate whether a specific procedure is applicable in the case of termination of employment for reasons of an economic, technological, structural or similar nature, in accordance with *Articles 13 and 14.*

In this context, the Committee notes that the Government refers to a Bill which should amend legislation currently in force and ensure application of the Convention, but it provides no information on the contents of this Bill. The Committee recalls that, when the Governing Body at its 268th Session in March 1997 approved the report of the committee set up to examine the representation made under article 24 of the ILO Constitution by the Confederation of Turkish Trade Unions (TÜRK-IŞ) alleging non-observance by Turkey of the Convention, it urged the Government to take the necessary measures as soon as possible to give full effect to the provisions of the Convention, in accordance with *Article 1.* The Committee trusts that the Government's next report will contain information that real progress has been made in this regard.

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In addition, requests regarding certain points are being addressed directly to the following States: *Gabon, Morocco, Portugal, Ukraine, Venezuela, Yemen.*

Convention No. 159: Vocational Rehabilitation and Employment (Disabled Persons), 1983

Requests regarding certain points are being addressed directly to the following States: *Chile, Dominican Republic, Guatemala, Guinea, Pakistan, Sao Tome and Principe*.

Information supplied by *Malta* in answer to a direct request has been noted by the Committee.

Convention No. 160: Labour Statistics, 1985

Portugal (ratification: 1993)

The Committee has noted the Government's report, as well as the comments of the General Confederation of Portuguese Workers (CGTP), attached to the Government's report. CGTP points out that one of the weaknesses of the national labour statistics programme is the exclusion of public administration from various sources, and comments also on the scope of certain statistics covered by the Convention. The Committee is dealing with these comments in its direct request, and asks the Government to refer to the specific questions raised therein.

Sri Lanka (ratification: 1993)

In its earlier observation, the Committee noted the comment presented by the Ceylon Workers' Congress, which pointed out the non-observance of *Article 3 of the Convention* concerning the consultation with the representative organizations of employers and workers in designing or revising the concepts, definitions and methodology used as regards the statistics covered by the Convention. It notes that the Government admits that there is still no machinery to consult the employers' and workers' organizations for these purposes and states that this requirement is to be considered in future.

The Committee recalls once again that the aim of the consultation provided by this Article is to take into account the needs of employers and workers and to ensure their cooperation, and that it leaves the choice of method of the consultation to each State, which may or may not be through a statutory machinery. It again requests the Government to provide information on any measures taken or envisaged to consult employers' or workers' organizations for each of the *Articles 7, 8, 10, 12, 13 and 15*.

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In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Bolivia, El Salvador, Ireland, Latvia, Mauritius, Portugal, Sri Lanka, Swaziland, Tajikistan*.

Convention No. 162: Asbestos, 1986

Requests regarding certain points are being addressed directly to the following States: *Cameroon, Germany*.

Convention No. 163: Seafarers' Welfare, 1987

Requests regarding certain points are being addressed directly to the following States: *Hungary, Mexico, Spain.*

Convention No. 164: Health Protection and Medical Care (Seafarers), 1987

Requests regarding certain points are being addressed directly to the following States: *Hungary, Sweden.*

Convention No. 165: Social Security (Seafarers) (Revised), 1987

A request regarding certain points is being addressed directly to *Hungary.*

Convention No. 167: Safety and Health in Construction, 1988

Sweden (ratification: 1991)

Article 30 of the Convention. The Committee notes with interest the Government's reply to its previous comments that had referred to the remarks made by the Swedish Trade Union Confederation (LO) regarding the need for inspection of personal protective equipment to rely on market control and the need for resources to be allotted to the authorities responsible for this in order to maintain a high standard of safety. The Government indicates that since 1 January 1994, it has incorporated EC Directive 89/686/EEC on personal protective equipment with its legislation through AFS 1993:11 Design of Personal Protective Equipment, revised through AFS 1996:7. The Directive requires national authorities to verify that the products of personal protection on the market satisfy the safety requirements of the Directive. The Government states that within the framework of inspection, a Nordic project has been conducted in which Swedish representatives acted as project leaders and all five Nordic countries took part. Various personal protective equipment were divided up between the different countries. The Committee notes the report of this activity from the Nordic Council of Ministers entitled *Market control of personal protective equipment* of 1997.

The Committee requests the Government, in its future reports, to continue to communicate information on the measures taken or envisaged to ensure the application of the Convention, including all necessary information on the application of the Convention in conformity with *point VI of the report form* (labour inspection reports, information on the number of workers covered by the legislation, the number and nature of the contraventions reported and the resulting action taken, and the number of occupational accidents and diseases reported).

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In addition, a request regarding certain points is being addressed directly to *Iraq.*

Convention No. 168: Employment Promotion and Protection against Unemployment, 1988

Requests regarding certain points are being addressed directly to the following States: *Brazil, Norway*.

Convention No. 169: Indigenous and Tribal Peoples, 1989

Bolivia (ratification: 1991)

1. The Committee notes that the Government's report has not been received. At the same time it notes that a number of laws and decrees have been adopted and published since the Government's last report which affect the situation of indigenous peoples of the country, and which in fact refer directly to the Convention. These include Act No. 1551 of 1994 on Popular Participation, and Act No. 1702 of 1996 which amends it, the Forest Act No. 1700 of 1996, the Mining Code (Act No. 1777 of 1997), and various others. It hopes that a report will be supplied for the next session which provides detailed information on the effect of this new legislation.

2. The Committee notes in addition that a representation has been submitted by the Bolivian Central of Workers (COB) under article 24 of the ILO Constitution, alleging the non-observance of certain provisions contained in the Convention. The Committee will therefore return to the matters raised in its previous comments, as well as in the representation, at its next session. It hopes that the Government will communicate a detailed report covering the outstanding matters.

Colombia (ratification: 1991)

1. The Committee takes note of the Government's report and of the comments provided by various representative organizations. The Committee also notes that the Constitutional Court and the Supreme Court, as well as lower courts, have handed down a number of rulings that take the provisions of the Convention into account.

2. The Committee notes that the communication sent by a number of organizations, which was transmitted to the Government on 18 August 1998, refers to the construction of a hydroelectric scheme (the Urrá project) which will flood much of the territory occupied by the Emberá-Katío community and, in the absence of any consultations with the indigenous communities affected, will contravene *Article 6 of the Convention*. The representative organizations concerned requested that a direct contacts mission be sent with a view to safeguarding the rights of the Emberá-Katío people who are settled in the Alto Sinú region. The Committee hopes that the Government will send its comments on this matter as soon as possible.

3. The Committee notes with interest the promulgation of Decrees Nos. 1396 and 1397 of 8 August 1996 establishing the Committee on the Human Rights of Indigenous Peoples and the National Committee for Indigenous Territories, and the fact that the ILO was invited to participate in some of the subcommittees of these bodies. In this connection, the Committee requests the Government to provide information on the practical activities of these bodies since they were established, in particular information on environmental impact studies which should involve the indigenous communities concerned before any environmental licence is granted, in accordance with section 7 of Decree No. 1337.

4. *Article 3.* In an earlier direct request, the Committee took note of reports that had been received of human rights violations, including massacres in indigenous communities in Sierra Nevada de Santa Marta, and the fact that the Permanent Commission on Indigenous Rights was conducting investigations into these human rights violations, in cooperation with the Office of the People's Advocate. The Committee asks the Government to indicate whether the Committee on the Human Rights of Indigenous Peoples now has the power to investigate these grave allegations and requests the Government to provide information on the progress made in these investigations.

5. The Committee notes, however, that the Government's report contains no replies to many of the questions raised in its direct request in 1995, in particular concerning the practical application of the majority of Articles of the Convention. While it is clear, from the documentation that accompanied the report, that a considerable amount of theoretical work has been done, especially by the Directorate General for Indigenous Affairs, there is little indication of the extent to which the policies recommended have been formally adopted and put into practice. The Committee is therefore addressing other questions on the application of the Convention in a detailed request which it is sending directly to the Government.

[The Government is asked to report in detail in 2000.]

Guatemala (ratification: 1996)

1. The Committee notes with interest the Government's first report following ratification of the Convention, and is addressing a request directly to it asking for more information. The Committee notes, furthermore, the communication sent by the Popular Federation of Peasant Farmers on the application of the Convention, which was received shortly before its session. The Committee hopes that the Government will send detailed comments on this communication to be examined in its next session.

2. The Committee recalls that the ratification of the Convention was one element in the settlement of the internal conflict in the country, which — as indicated in the preamble of the 1996 Peace Agreement — "brought an end to more than three decades of armed confrontation in Guatemala". It notes in this respect that the ILO continues to play a part in the implementation of the Peace Agreement, and that considerable technical assistance is being provided from the international community for this purpose.

3. The first report is a brief one, and on a number of questions the Government indicates simply that the mechanisms set forth to implement the Peace Agreement have not yet concluded their work. The Committee requests the Government to report in detail on the progress achieved in implementing the obligations undertaken under the Peace Agreement and the Convention. It looks forward to a more detailed report in reply to its present comments, and encourages the Government to continue working with the assistance of the Office to create the necessary conditions for the Convention's full implementation.

Mexico (ratification: 1990)

1. The Committee takes note of the Government's substantial and detailed report and of the information supplied by the Authentic Labour Front (FAT) on a number of occasions.

2. *Article 2.* The Committee previously noted with interest the broad-based process of consultation on the rights and participation of indigenous peoples, launched by the Government with a view to drawing up, revising and promoting a programme of constitutional and legislative reform in the area of indigenous rights and culture. The Committee is grateful for the full report on this nationwide consultation process and the

other relevant documents. The Committee notes that, as a result of these consultations, constitutional reform initiatives concerning indigenous matters have been submitted to the Federal Congress by the Federal Executive, by two political parties. It must be emphasized that there is also a bill that has been presented by the Commission on Reconciliation and Peacebuilding (COCOPA) of the Federal Legislature. Similarly, it notes the fact that, at the federal level, specific provisions relating to indigenous issues have been included in the Copyright Act, the Forestry Act and the General Act respecting environmental balance and protection. The Committee also notes the fact that some of the communications transmitted by the FAT draw attention to the peace accord signed by the Government and the Zapatista National Liberation Army (EZLN) in San Andrés on 16 February 1996. Bearing in mind that the Convention was used as a reference document in these negotiations, the Committee requests the Government to continue to provide information on any developments in the situation with regard to the practical implementation of the agreements reached during the negotiations. The Committee also requests the Government to continue to provide information on the nature of the constitutional initiatives that have been submitted and on the stage which they have reached in the Federal Congress.

3. In a previous direct request, the Committee requested detailed information on developments in practice with regard to the proposed changes to the National Indian Institute (INI) to increase participation by indigenous peoples. The Committee notes the information in the report to the effect that the resources intended for the indigenous peoples are channelled through regional funds for the development of indigenous peoples. The Committee requests the Government to provide information on the INI's proposals to transform itself in order to allow the transfer to the states of operational programmes, budgets, staff and assets and to promote participation by indigenous people in the management and planning of its policies and activities.

4. *Articles 8 to 12. Justice.* With regard to the administration of justice, the FAT states in its comments that torture is used to extract confessions and that criminal trials are held without any interpreters for the defendants and without any regard for indigenous customary laws. The comments of the FAT also indicate that numerous violations of individual rights against indigenous people continue to be reported in various states. For example, the communication alleges that in Oaxaca, following a campaign for the release of indigenous people carried out by the Human Rights Centre "Tepeyac", 229 indigenous prisoners were released between March 1994 and March 1995; of these, 163 (71 per cent) were acquitted, while the rest were released conditionally. According to the communication, this shows the high proportion of indigenous people who are unjustly prosecuted and incur damages therefor, for which they are never given just compensation.

5. The Committee notes the detailed information provided by the Government concerning this point of the observation, in which it indicates that legislative reforms have been introduced in certain states (Campeche, Chiapas, Chihuahua, Durango, Guerrero, Hidalgo, Jalisco, México, Nayarit, Oaxaca, Querétaro, Quintana Roo, San Luis Potosí, Sonora and Veracruz) in the form of provisions stipulating that interpreters must be present at trials of indigenous people and that indigenous customs should be taken into consideration during the trial and at the time of sentencing. The Committee also notes that the Attorney-General's Office has devoted particular attention to trials involving indigenous people, in particular 311 criminal cases, offering legal advice and ensuring that the rights of the defendants are respected. It notes further that the Inspectorate for Indigenous Affairs has continued to cooperate with public defenders in district courts in all states of the Republic, and notes also the creation in February 1998 of the Fourth General Inspectorate with the aim of guaranteeing effective access to justice for members of indigenous peoples and the full exercise of their human rights. The Committee notes that between February and May 1998,

the Fourth General Inspectorate obtained the release from prison of 90 indigenous people who were eligible for early release.

6. The Committee recalls that indigenous peoples must have the same rights as other citizens in the country and must accept the corresponding obligations. In this case, the Committee notes that in certain cases, the fundamental rights of indigenous people were violated because they were given no chance to mount an adequate defence and were kept in ignorance of the offences of which they were accused by being denied access to an interpreter or public defender. The Committee points out that the objective of *Article 12* of the Convention, in providing for special protection for these peoples is to compensate for the disadvantages they may be under in that they may not possess the linguistic or legal knowledge required to assert or protect their rights. The Committee regrets the large number of indigenous people held in prison in Oaxaca without having been convicted. It requests the Government to continue to take the necessary measures to provide effective protection of and respect for the rights of indigenous people both in legislation and in practice, in accordance with the Convention. The Committee requests the Government to inform it of any progress made in this matter and to continue to provide information on action taken by the Fourth General Inspectorate on cases involving the imprisonment of indigenous people.

7. The Committee also notes that, in the state of Chiapas, the Act respecting the economic development of the state has been adopted. The Government states that this Act will have a major impact on the indigenous population. The Committee also notes that provisions relating to the need to take into account indigenous customs have been introduced in a number of state constitutions and regulatory laws, such as the Agriculture Act, the Organic Act respecting the Federal Public Administration and the General Education Act, and that the work of establishing a legal framework appropriate to the nation's multicultural make-up is progressing. The Committee requests the Government to provide further information in this regard.

8. *Articles 13 to 19. Land.* The Committee notes the report presented to the Governing Body by a tripartite committee set up to examine a representation made by the Trade Union Delegation, D-III-53, section XI of the National Trade Union of Education Workers (SNTE), alleging non-observance by the Government of Mexico of certain provisions of the Convention. In this regard, the Committee requests the Government to inform it of any decision handed down by the Third Collegial Court of the Twelfth Circuit concerning the appeal for protection by the organization which made the representation, the Union of Huichol Indigenous Communities, against the decision of the Agrarian Unitary Tribunal in the particular case of Tierra Blanca; to inform it of measures taken or contemplated to provide redress for the situation of the Huicholes, who represent a minority in the area in question and have not been recognized in any agrarian census, measures which might include the adoption of special measures to safeguard the existence of these peoples as such and their way of life to the extent that they themselves wish to preserve it; and to provide information on the possible adoption of suitable measures to remedy the situation which has given rise to this representation, taking into account the possibility of allocating additional land to the Huichol people when their own land ceases to be sufficient to provide the essentials of a normal existence or for any possible increase in their numbers, in accordance with *Article 19* of the Convention.

9. The Committee takes due note of the information provided the Government during its meeting to the effect that the agrarian tribunals are autonomous and independent. It notes also the establishment of the Agrarian Inspectorate, a decentralized body which is in the process of speeding up the proceedings in the various courts concerning the presentation made by the SNT. Similarly, it notes that meetings have been convened to update the agrarian censuses, and advice and arbitration is being made available to the complainants,

and that an inter-institutional commission has been set up that has held a number of meetings with a view to resolving the questions raised. In this regard, the Committee requests the Government to keep it informed of any progress made with regard to the specific points made in the representation.

10. The Committee also notes the fact that the Radical Trade Union of Metal and Associated Workers made a representation under *article 24* of the ILO Constitution alleging non-observance by the Government of Mexico of a number of Articles of the Convention. The representation was declared receivable by the Governing Body at its 273rd Session (November 1998).

11. Further, the Committee notes that the FAT, in its comments, continues to allege that the mining and logging activities of multinational companies in the Tarahumara range in the State of Chihuahua have caused deforestation which in turn has led to an increase in drought conditions and placed the survival of the Rarámuri people in jeopardy. Similarly, in the Chimalapas, in the State of Oaxaca, exploitation of natural resources in the region has affected indigenous communities and led to confrontations between them. The communication of the FAT refers to the mega-project of the Tehuantepec isthmus which includes the construction of a super highway and a "bullet train" railway and the development of 146 industrial projects, without any consultations with the indigenous peoples in the region on the social, spiritual, cultural and environmental impact of this project on the land and the people's way of life.

12. The Committee notes the information provided by the Government on the measures which it has taken, in particular the advice on land questions provided by the Agrarian Inspectorate; on cases of land recognition and title that have been settled since August 1997; and on the Programme of Certification of Rights (PROCEDE) and the Programme of Regularization of Ownership of Land in Communities. The Committee also notes that during the period covered by the report, 860 cases pertaining to agrarian law and legal representation were concluded in municipalities of indigenous populations and 1,722 in municipalities of indigenous concentration. The Committee also notes the detailed information provided by the Government concerning the legal situation of los Chimalapas, particularly the commitment to seek consensus-based solutions through measures adopted under an agrarian conciliation programme with the participation of all the indigenous groups and communities involved in the dispute. In this regard, the Committee requests the Government to keep it informed of any developments in the situation in the Chimalapas.

13. As regards the mining and logging activities of multinational companies in the Tarahumara range and plans to develop the Tehuantepec isthmus, the Committee recalls that, under *Article 15* of the Convention, the rights of indigenous peoples to the natural resources pertaining to their lands shall be specially safeguarded, and these peoples should have the right to participate in the use, management and conservation of these resources. Governments are also required to establish and maintain procedures for consulting the peoples concerned with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of resources pertaining to their lands. The Committee requests the Government to make full use of appropriate procedures for consulting the indigenous communities who may be affected by any development projects on their lands or by the award of any concessions for the exploitation of natural resources on lands belonging to or traditionally occupied by those peoples. The Committee requests the Government to provide detailed information in its next report on measures taken for this purpose.

14. *Article 20. Recruitment and conditions of employment.* The Committee takes note of the report provided by the FAT entitled "*Slavery in Mexico: Rural migrant workers ... their human rights*", which describes the situation of indigenous migrant workers, among

others, recruited under the so-called "enganche" system through intermediaries who deceive the workers recruited and take a percentage of their wages. The report also indicates that the employers sign collective agreements only with the official trade unions, rather than individual contracts, without the workers knowledge or consent.

15. The socio-economic and cultural situation of indigenous peoples, according to the FAT, has forced them to migrate to the cities where they suffer discrimination and violations of their labour rights. One example is that of the tobacco plantations of Nayarit employing Huichol migrant day labourers, whose working conditions have deteriorated owing to the use of toxic pesticides, without any monitoring or control by the health and environment authorities. The communication from the FAT states that the day labourers are not informed about the use of the pesticides, which are used even by children below the age of 14 years and adolescents without any protection, resulting in cases of severe poisoning including a number of fatalities. Furthermore, wages paid to indigenous workers are lower than those paid to other workers.

16. The communication also states that these workers have no access to timely medical care because the Social Security Act provides only for medical attention during the period of their employment, on condition that they present a "pass", which is in many cases difficult to obtain where a worker does not have a birth certificate and because control over passes by the employer has become another source of abuse. The workers only have access to trade unions which have shown no concern for their precarious situation, while independent organizations that have started to organize agricultural workers have been systematically denied the right to register. The FAT states that situations such as this have been notified to the appropriate authorities, but there has been no satisfactory response.

17. The Committee notes that according to the Government's report, a programme of legal training and information has been developed for migrant indigenous peoples in the states of Baja California, Sonora and Sinaloa, which have the greatest number of migrant agricultural workers of indigenous origin. The Committee also notes that the Government has established the National Programme for Agricultural Day Labourers (PRONJAG) which deals with problems in areas such as housing and environment, food and supplies, health and social security, education, culture and recreation, employment, training and productivity, and obtaining justice. This programme also includes workshops for indigenous migrant workers on indigenous rights, in particular on the Convention. The Committee observes that the Government has not replied to the specific comments sent by the FAT on recruitment and conditions of employment of migrant workers.

18. In the light of the allegations, the Committee recalls that, under *Article 20* of the Convention, governments are required to adopt special measures to ensure effective protection for indigenous peoples in the area of recruitment and conditions of work. The Convention also states that governments must do everything possible to prevent any discrimination between workers that are members of indigenous peoples and other workers, in particular with regard to equal pay for work of equal value, medical care and health at work, and to ensure that workers belonging to the peoples in question are not required to work in conditions that are hazardous to health, in particular as a result of their exposure to pesticides or other toxic substances. In this regard, the Committee requests the Government to continue to keep it informed on the effect in practice of these measures, in particular with regard to protection of wages and maternity protection for indigenous agricultural day labourers, on measures taken or contemplated to prevent child labour among indigenous peoples and on medical services and the general conditions of employment of these migrant indigenous workers.

19. The Committee, while noting that the Government has entered into undertakings to collaborate with state governments to strengthen occupational safety and health

inspection, wishes to point out that one of the most important means for ensuring effective protection of fundamental labour rights is frequent and effective inspections of workplaces where indigenous workers are employed. The Committee urges the Government to intensify its efforts to improve the labour situation of indigenous workers, and to provide detailed information on the number and the results of inspection visits covering indigenous workers in rural areas and in areas with a large number of indigenous migrant workers.

20. The Committee notes with interest the information provided by the Government during its meeting on its plans to hold a seminar in the first quarter of 1999 on labour inspection in rural areas. The Committee hopes that this seminar will take place with the participation of representatives of the indigenous peoples concerned.

21. A request regarding certain points relating to the application of the Convention is being addressed directly to the Government.

Peru (ratification: 1994)

1. The Committee notes with interest the Government's first report on the application of the Convention, which is being examined in detail in a request addressed directly to the Government. It hopes the Government will provide full information on the questions raised therein, as the situation of the indigenous peoples of Peru is quite complex.

2. *Article 11 of the Convention.* The Committee also refers to the observation made this year under Convention No. 29, concerning allegations of forced labour imposed on indigenous peoples in the country.

3. *Land rights under the Convention.* The Committee notes that the Governing Body concluded, at its 273rd (November 1998) Session, consideration of a representation submitted under article 24 of the Constitution, on the application of this Convention. This representation had been submitted by the General Confederation of Workers of Peru (Confederación General de Trabajadores del Péru) (CGTP). It was submitted and examined before the Committee could examine the Government's first report following ratification.

4. The representation alleged, to summarize in brief, that Act No. 26845 of 26 July 1997, the Land Titling Act for the Rural Communities of the Coastal Region, violated both the letter and the spirit of the Convention, as well as of the Peruvian Constitution and other legislation, by allowing a portion of the inhabitants of these rural communities — mostly composed of indigenous peoples covered by the Convention — to decide to sell to individuals land which is in fact owned by the community as a whole. It stated that this violated the very essence of the Convention and was contrary to its basic concepts such as respect for these peoples, the guarantee that they would have the right to participate in decision-making on matters affecting them, and the need to maintain their cultural identities. The Government replied that this legislation in fact merely consecrated in law a situation of fact, that these lands were already held as individual parcels, and that individual ownership was a better guarantor of economic development in this region.

5. The Governing Body concluded that there is a difficult situation in the country arising from the several different ways in which the peoples covered by the Convention are defined, and the different rights that they have compared to each other. It recalled that *Article 13 of the Convention* provides that "governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands ... which they occupy or otherwise use, and in particular the collective aspects of this relationship". It also recalled that *Article 17, paragraph 2*, of the Convention provides that these peoples "shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community", and found that there was no indication that such consultation had taken place. It recalled that the

ILO's experience was that, when lands held collectively by indigenous and tribal peoples are divided and assigned to individuals or those who are not members of their communities, the exercise of their rights by the community or the indigenous peoples tends to be weakened and, in general, they ultimately lose all or most of their lands as well. The Governing Body found that, while it was not its function to determine whether collective or individual property was the most appropriate arrangement for indigenous or tribal peoples in any given situation, the Conference had decided in adopting the Convention that involving these peoples in the decision as to whether this form of ownership should change was extremely important. It asked the Government to include detailed information on the measures taken to apply these Articles of the Convention in its reports under article 22 of the Constitution.

6. The Committee endorses the conclusions and recommendations of the Governing Body (which went into greater detail than outlined here). It calls upon the Government to examine the results of this representation, and to provide detailed information in its next report on how it is carrying out the conclusions of the Governing Body on this representation.

7. *Mineral exploitation — Article 15.* The Committee understands that a large number of grants of permission for mineral exploration and exploitation in regions inhabited by indigenous peoples have been accorded in the last three years. Please provide detailed information on the consultations that took place with these peoples in this respect, on the legislation and rules governing such consultation, on the studies that were carried out concerning the impact on these communities of this exploration and exploitation, and of the arrangements being made so that the communities concerned share in the management and benefits of these operations, as required by this Article.

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In addition, requests regarding certain points are being addressed directly to the following States: *Colombia, Costa Rica, Guatemala, Mexico, Paraguay, Peru.*

Convention No. 170: Chemicals, 1990

Norway (ratification: 1993)

The Committee notes the comments made by the Norwegian Federation of Oil Workers' Trade Unions (OFS) which were communicated to the Government in August 1998 for its comments. The OFS indicates that it has been, for the last 18 months, complaining to the authorities in Norway about the Jotun paint company marketing and selling a product containing isocyanates, without sufficient labelling and information to protect users. The OFS states that in the autumn of 1997, the Norwegian Petroleum Directorate of Labour Inspection gave official statements concerning the prosecution of the Jotun paint company. OFS finds it reasonable to believe that these statements are critical of the Jotun company and the marketing and selling of their products. In the opinion of the OFS, had these official statements been made public, they could have helped safeguard the health of the members of the OFS and other users of the products. The OFS indicates that it has been refused copies of the official statements despite repeated requests made to the authorities for them.

The Committee notes the Government's reply which states that in Norway chemicals containing isocyanates must be labelled as a health hazard in accordance with regulations on classification, labelling etc., of hazardous chemicals. Health, environmental and safety (HES) regulations also require the preparation of HES data sheets. Chemicals that require labelling under the labelling regulations and are manufactured or imported in quantities of 100 kilos or more have to be declared to the Norwegian Product Register. The Government adds that Norwegian authorities take a very serious view of the fact that the information that manufacturers and importers provide on their products containing isocyanates falls short of the legal requirements. Accordingly, this autumn the Directorate of Labour Inspection has asked 900 manufacturers, importers and marketers of isocyanates to make certain that health-hazard labelling and HES data sheets for their products are in accordance with the regulations and that they provide complete health-hazard information to users. Concurrently, establishments are made particularly aware of the obligation to declare products to the Product Register. Coercive fines or sales bans will be imposed by the Directorate of Labour Inspection if the legal provisions on health-hazard labelling and HES data sheets are violated, and establishments have been informed to this effect. Moreover, the Directorate of Labour Inspection will in 1999 run a campaign in the construction industry with the focus on all conditions pertaining to the use of chemicals in this industry. The Government is therefore of the view that Norway has fully complied with the requirements of the Convention.

With respect to the details of the comments made by the OFS, the Government indicates that during the investigation of the complaint by the OFS against the company Jotun AS for violation of the labelling regulations and of the regulations concerning HES data sheets involving the product "Hard Comp B", both the Petroleum Directorate and the Directorate of Labour Inspection made statements to the police, which statements were in the nature of guidance and contain information for police use in the investigation and review of the case. The Government acknowledges that, having reviewed the OFS's petition under section 2, third paragraph of the Freedom of Information Act, the Ministry of Local Government and Regional Affairs confirmed on 10 November 1997, the refusal by the police and the Public Prosecutor, to permit the OFS to inspect the Petroleum Directorates's statement for the duration of the investigation based on section 6, subsection 5, of the Freedom of Information Act and the Criminal Procedure Act which give a right to except from the public domain documents prepared in connection with a concrete violation of the law. The Government indicates that once the police investigation is completed, the Ministry of Local Government and Regional Affairs will have no hesitation about freeing the document.

The Committee notes this information and requests the Government to communicate information on measures taken to provide access to the OFS to inspect the said statements as soon as the police investigation of the case in question is concluded. In the meantime, the Committee would be grateful if the Government would take the necessary measures in order that the Jotun paint company satisfactorily applies the provisions of the regulations concerning the health, environmental and safety (HES) regulations relating to the essential information that should be indicated in the labels of hazardous chemicals, as provided for in *Articles 7 and 10 of the Convention*.

Convention No. 171: Night Work, 1990

A request regarding certain points is being addressed directly to *Lithuania*.

Convention No. 172: Working Conditions (Hotels and Restaurants), 1991

Requests regarding certain points are being addressed directly to the following States: *Mexico, Spain, Uruguay*.

Convention No. 173: Protection of Workers' Claims (Employer's Insolvency), 1992

Spain (ratification: 1995)

The Committee has noted the Government's first report, as well as the comments of the General Union of Workers (UGT), which were sent to the Government for observation on 24 March 1998.

The UGT points out that the quantitative limit to the payment of guarantee by the Wage Guarantee Fund (FOGASA) which is based on the interprofessional minimum wage (SMI) is resulting in insufficient protection. It also notes that, because of the budgetary insufficiency of the FOGASA itself and administrative procedures, it takes the worker at least three-and-a-half years to receive the indemnities after the non-payment by the employer occurred.

The Committee notes that the Government has not supplied its observations in reply to these comments and invites the Government to do so, with reference to *Article 13 of the Convention* regarding the first point, and treating the second point as a question of the application of Part III of the Convention in practice.

As to the contributions payable by the employer regarding social security, mentioned among other points by the UGT in the comments, the Committee notes that such contributions are not included in the "workers' claims" to be protected under this Convention *(Articles 6 and 12)*, and therefore do not fall within its scope.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Lithuania, Spain, Switzerland*.

Appendix I. Table of reports received on ratified Conventions as at 11 December 1998

(article 22 of the Constitution)

Article 22 of the Constitution of the International Labour Organization provides that "each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request". Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 204th (November 1977) Session, the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under article 22 of the Constitution:

(a) the practice of tabular classification of reports, without summary of their contents, which has been followed for several years in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;

(b) the Director-General should make available, for consultation at the Conference, the original texts of all reports received on ratified Conventions; in addition, photocopies of the reports should be supplied on request to members of delegations.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification.

Reports received under article 22 of the Constitution appear in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations; first reports are indicated in parentheses.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

Afghanistan **7 reports requested**

- No reports received: Conventions Nos. 45, 100, 105, 111, 137, 141, 142

Albania **8 reports requested**

- All reports received: Conventions Nos. 6, 29, 58, 59, 87, 98, 100, 112

Algeria **14 reports requested**

- 7 reports received: Conventions Nos. 44, 87, 88, 100, 105, 108, 122
- 7 reports not received: Conventions Nos. 29, 91, 92, 96, 98, 142, 144

Angola **19 reports requested**

- All reports received: Conventions Nos. 1, 7, 26, 27, 29, 45, 68, 69, 73, 74, 81, 88, 91, 92, 98, 100, 105, 108, 111

Antigua and Barbuda **8 reports requested**

- No reports received: Conventions Nos. 29, 81, 87, 98, 105, 108, 111, 138

Argentina **17 reports requested**

- 15 reports received: Conventions Nos. 1, 2, 8, 27, 29, 30, 45, 87, 88, 95, (96), 100, 129, (138), 142
- 2 reports not received: Conventions Nos. 3, 35

Armenia **6 reports requested**

- No reports received: Conventions Nos. (100), (111), (122), (135), (151), (174)

Australia **9 reports requested**

- All reports received: Conventions Nos. 8, 27, 29, 47, 87, 88, 100, 122, 142

Austria **10 reports requested**

- All reports received: Conventions Nos. 5, 27, 29, 45, 87, 88, 100, 122, 142, (173)

Azerbaijan **14 reports requested**

- All reports received: Conventions Nos. 27, 29, 45, 47, 87, 88, 100, 108, 120, 122, 126, 140, 142, 147

Bahamas **9 reports requested**

- All reports received: Conventions Nos. 5, 7, 17, 26, 29, 45, 88, 105, 117

Bahrain **2 reports requested**

- 1 report received: Convention No. 29
- 1 report not received: Convention No. 81

Bangladesh **11 reports requested**

- 8 reports received: Conventions Nos. 1, 27, 29, 59, 81, 87, 105, 107
- 3 reports not received: Conventions Nos. 45, 96, 111

Barbados **17 reports requested**

- 12 reports received: Conventions Nos. 26, 29, 81, 87, 98, 100, 105, 111, 115, 135, 144, 147
- 5 reports not received: Conventions Nos. 5, 7, 19, 108, 122

Belarus **11 reports requested**

- All reports received: Conventions Nos. 27, 29, 45, 47, 87, 88, 100, 108, 122, 142, 144

Belgium **15 reports requested**

- All reports received: Conventions Nos. 1, 8, 27, 29, 45, 82, 87, 88, 96, 100, 122, (139), 147, 148, (162)

Belize **7 reports requested**

- No reports received: Conventions Nos. 5, 8, 29, 87, 88, 99, 108

Benin **4 reports requested**

- All reports received: Conventions Nos. 5, 29, 87, 100

Bolivia
26 reports requested

- 24 reports received: Conventions Nos. 1, 5, 19, 30, 45, 81, 87, 88, 96, 98, 100, 102, 103, 117, 118, 120, 121, 122, 128, 129, 130, 131, 136, 169
- 2 reports not received: Conventions Nos. (159), 160

Bosnia and Herzegovina
37 reports requested

- No reports received: Conventions Nos. 8, 9, 13, 14, 16, 19, 22, 23, 27, 29, 32, 45, 53, 69, 73, 74, 81, 87, 88, 91, 92, 98, 100, 102, 103, 111, 113, 119, 122, 126, 129, 131, 135, 136, 138, 139, 142

Brazil
16 reports requested

- All reports received: Conventions Nos. 5, 29, 45, 88, 100, 108, 117, 122, 131, (134), 136, 140, 142, 147, 168, (170)

Bulgaria
13 reports requested

- All reports received: Conventions Nos. 1, 8, 9, 27, 29, 30, 34, 44, 45, 68, 87, 100, 108

Burkina Faso
5 reports requested

- No reports received: Conventions Nos. 5, 29, 87, 100, 129

Burundi
22 reports requested

- No reports received: Conventions Nos. 1, 11, 12, 14, 17, 19, 26, 27, 29, 42, 52, 59, 62, 81, (87), 89, 90, 94, (100), 101, 105, (111)

Cambodia
2 reports requested

- All reports received: Conventions Nos. 29, 122

Cameroon
21 reports requested

- 9 reports received: Conventions Nos. 3, 10, 19, 33, 81, 98, 105, 111, 131
- 12 reports not received: Conventions Nos. 5, 9, 16, 29, 45, 87, 100, 108, 122, 123, 135, 146

Canada
9 reports requested

- All reports received: Conventions Nos. 1, 8, 27, 87, 88, 100, 108, 122, 147

Cape Verde
3 reports requested

- No reports received: Conventions Nos. 29, 100, 118

Central African Republic
9 reports requested

- All reports received: Conventions Nos. 2, 5, 14, 26, 29, 87, 88, 100, 117

Chad
7 reports requested

- All reports received: Conventions Nos. 5, 26, 29, 81, 87, 100, 105

Chile
19 reports requested

- All reports received: Conventions Nos. 1, 2, 5, 8, 27, 29, 30, 35, 36, 37, 38, 42, 100, 115, 122, 136, 156, 159, 162

China
4 reports requested

- All reports received: Conventions Nos. 27, 45, 59, 100

Hong Kong Special Administrative Region
11 reports requested

- No reports received: Conventions Nos. (2), (5), (8), (29), (45), (59), (87), (108), (122), (142), (147)

Colombia
15 reports requested

- All reports received: Conventions Nos. 1, 2, 5, 8, 29, 30, 87, 88, 95, 98, 100, 129, 136, 167, 169

Comoros
12 reports requested

- No reports received: Conventions Nos. 1, 5, 10, 11, 26, 29, 33, 87, 99, 100, 106, 122

Congo **4 reports requested**

* No reports received: Conventions Nos. 5, 29, 87, 95

Costa Rica **18 reports requested**

* 15 reports received: Conventions Nos. 1, 8, 29, 45, 81, 87, 88, 96, 100, 111, 117, 120, 122, 129, 144
* 3 reports not received: Conventions Nos. 130, 147, 169

Côte d'Ivoire **8 reports requested**

* 7 reports received: Conventions Nos. 5, 29, 45, 87, 96, 129, 136
* 1 report not received: Convention No. 100

Croatia **12 reports requested**

* All reports received: Conventions Nos. 8, 27, 29, 45, 48, 87, 100, 102, 122, 129, 136, (147)

Cuba **15 reports requested**

* All reports received: Conventions Nos. 1, 8, 27, 29, 30, 45, 87, 88, 96, 100, 108, 122, 136, 142, (159)

Cyprus **14 reports requested**

* 10 reports received: Conventions Nos. 23, 29, 45, 87, 88, 92, 100, (135), 142, (171)
* 4 reports not received: Conventions Nos. 44, 111, 122, (147)

Czech Republic **27 reports requested**

* 25 reports received: Conventions Nos. 1, 5, 13, 26, 27, 29, 45, 87, 88, 98, 99, 100, (105), (108), 120, 122, 130, (132), 136, 142, 155, 163, 164, 167, (171)
* 2 reports not received: Conventions Nos. 102, 128

Democratic Republic of the Congo **15 reports requested**

* No reports received: Conventions Nos. 19, 26, 27, 29, 62, 81, 84, 88, 94, 98, 100, 117, 118, 119, 120

Denmark **15 reports requested**

* 10 reports received: Conventions Nos. 8, 9, 29, 87, 100, 108, 122, 129, 147, 167
* 5 reports not received: Conventions Nos. 27, 88, 130, 142, (169)

Djibouti **39 reports requested**

* No reports received: Conventions Nos. 1, 5, 9, 16, 19, 26, 29, 37, 38, 44, 45, 52, 53, 55, 58, 69, 73, 77, 78, 81, 87, 88, 91, 94, 95, 96, 98, 99, 100, 101, 105, 106, 108, 115, 120, 122, 124, 125, 126

Dominica **7 reports requested**

* No reports received: Conventions Nos. 8, 26, 29, 87, 97, 100, 108

Dominican Republic **9 reports requested**

* All reports received: Conventions Nos. 1, 5, 7, 29, 45, 87, 88, 100, 159

Ecuador **14 reports requested**

* All reports received: Conventions Nos. 29, 45, 87, 88, 100, 105, 111, 117, 118, 122, 130, 136, 142, 153

Egypt **11 reports requested**

* 10 reports received: Conventions Nos. 1, 2, 29, 30, 45, 87, 88, 100, 142, 147
* 1 report not received: Convention No. 96

El Salvador **6 reports requested**

* All reports received: Conventions Nos. 29, 88, 122, 129, (138), 142

Equatorial Guinea **5 reports requested**

* No reports received: Conventions Nos. 1, 30, (68), (92), 100

Estonia
11 reports requested

* All reports received: Conventions Nos. 2, 5, 8, 27, (29), 45, 87, (100), (105), (108), (135)

Ethiopia
6 reports requested

* All reports received: Conventions Nos. 2, 87, 88, 96, 98, 111

Fiji
5 reports requested

* No reports received: Conventions Nos. 8, 29, 45, 59, 108

Finland
20 reports requested

* All reports received: Conventions Nos. 8, 16, 27, 29, 30, 47, 73, 87, 88, 100, 108, 122, 129, 130, 136, 140, 142, 147, 152, 168

France
29 reports requested

* 9 reports received: Conventions Nos. 29, 35, 37, 44, 87, 118, 122, 136, 138
* 20 reports not received: Conventions Nos. 8, 27, 36, 38, 45, 82, 88, 92, 96, 100, 108, 126, 129, 133, 137, 139, 142, 144, 146, 147

Gabon
16 reports requested

* 9 reports received: Conventions Nos. 3, 26, 81, 98, 105, 111, 135, 144, 158
* 7 reports not received: Conventions Nos. 5, 29, 45, 87, 96, 99, 100

Georgia
8 reports requested

* No reports received: Conventions Nos. 29, 98, 100, (105), 111, 122, (138), 142

Germany
15 reports requested

* All reports received: Conventions Nos. 8, 27, 29, 45, 87, 88, 100, 122, 129, 130, 136, 142, 147, 161, 167

Ghana
28 reports requested

* 6 reports received: Conventions Nos. 1, 26, 59, 96, 119, 120
* 22 reports not received: Conventions Nos. 8, 22, 29, 30, 45, 58, 69, 74, 87, 88, 92, 94, 98, 100, 103, 105, 108, 111, 117, 148, 150, 151

Greece
15 reports requested

* All reports received: Conventions Nos. 1, 8, 27, 29, 45, 87, 88, 100, 108, 122, 136, 142, 147, (151), (154)

Grenada
16 reports requested

* No reports received: Conventions Nos. 5, 8, 10, 16, 19, 26, 29, 58, 81, (87), 98, 99, (100), 105, 108, (144)

Guatemala
19 reports requested

* All reports received: Conventions Nos. 1, 29, 30, 45, 59, 87, 88, 96, 100, 108, 117, 122, 129, (148), (154), 156, 159, 167, (169)

Guinea
14 reports requested

* 3 reports received: Conventions Nos. (144), (156), (159)
* 11 reports not received: Conventions Nos. 5, 29, 45, 87, 98, 100, 111, 117, 122, 136, 142

Guinea-Bissau
18 reports requested

* No reports received: Conventions Nos. 1, 7, 19, 26, 27, 29, 45, 68, 69, 73, 74, 81, 88, 91, 92, 100, 108, 111

Guyana
12 reports requested

* 11 reports received: Conventions Nos. 2, 29, 45, 87, 100, 108, 129, 136, 142, (166), (172)
* 1 report not received: Convention No. 5

Haiti
6 reports requested

* No reports received: Conventions Nos. 1, 5, 29, 30, 87, 100

Honduras **9 reports requested**

- All reports received: Conventions Nos. 27, 29, 45, 87, 100, 105, 108, 122, (169)

Hungary **15 reports requested**

- 14 reports received: Conventions Nos. 27, 29, 45, 87, 88, 100, 122, 127, 129, 136, 148, 154, 155, 167
- 1 report not received: Convention No. 142

Iceland **7 reports requested**

- All reports received: Conventions Nos. 2, 29, 87, 100, 102, 108, 122

India **11 reports requested**

- All reports received: Conventions Nos. 1, 5, 27, 29, 45, 88, 100, 111, 136, 141, (147)

Indonesia **6 reports requested**

- All reports received: Conventions Nos. 27, 29, 45, (69), 100, 144

Iran, Islamic Republic of **4 reports requested**

- 2 reports received: Conventions Nos. 29, 100
- 2 reports not received: Conventions Nos. 108, 122

Iraq **24 reports requested**

- 9 reports received: Conventions Nos. 1, 19, 30, 100, 108, 111, 118, 122, 135
- 15 reports not received: Conventions Nos. 8, 16, 27, 29, 88, 105, 136, 137, 138, 142, 144, 147, 152, 153, 167

Ireland **13 reports requested**

- All reports received: Conventions Nos. 8, 23, 27, 29, 44, 87, 88, 96, 100, 108, 122, 142, 147

Israel **14 reports requested**

- 13 reports received: Conventions Nos. 1, 29, 30, 87, 88, 91, 92, 96, 100, 117, 122, 136, 142
- 1 report not received: Convention No. (147)

Italy **18 reports requested**

- All reports received: Conventions Nos. 2, 8, 27, 29, 32, 44, 45, 87, 96, 100, 105, 108, 117, 122, 129, 136, 142, 147

Jamaica **9 reports requested**

- 8 reports received: Conventions Nos. 8, 29, 87, 98, 100, 111, 117, 122
- 1 report not received: Convention No. (144)

Japan **13 reports requested**

- All reports received: Conventions Nos. 5, 8, 27, 29, 45, 58, 87, 88, 96, 100, 122, 142, 147

Jordan **5 reports requested**

- All reports received: Conventions Nos. 29, 100, 117, 122, 142

Kazakhstan **2 reports requested**

- All reports received: Conventions Nos. (148), (155)

Kenya **7 reports requested**

- 3 reports received: Conventions Nos. 27, 45, 129
- 4 reports not received: Conventions Nos. 2, 29, 88, 142

Korea, Republic of **2 reports requested**

- All reports received: Conventions Nos. 122, 142

Kuwait **10 reports requested**

- All reports received: Conventions Nos. 1, 29, 30, 81, 87, 105, 111, 117, 119, 136

Kyrgyzstan

26 reports requested

- 1 report received: Convention No. (160)
- 25 reports not received: Conventions Nos. 16, 27, 29, 32, 45, 47, 69, 73, 87, 92, 98, 100, 103, 108, 111, 113, 119, 120, 122, 126, (133), 134, 138, 142, 147

Lao People's Democratic Republic

2 reports requested

- All reports received: Conventions Nos. 13, 29

Latvia

33 reports requested

- 3 reports received: Conventions Nos. 98, 105, (144)
- 30 reports not received: Conventions Nos. 3, 5, 7, 8, 9, 13, 16, 19, (81), 87, 100, 106, 108, (111), 115, 119, 120, (122), (129), 131, (132), (135), 142, 148, 149, 150, (151), (154), (155), (158)

Lebanon

11 reports requested

- All reports received: Conventions Nos. 1, 8, 29, 30, 45, 59, 74, 88, 100, 122, 147

Lesotho

5 reports requested

- All reports received: Conventions Nos. 5, 29, 45, 87, 98

Liberia

17 reports requested

- No reports received: Conventions Nos. 22, 23, 29, 53, 55, 58, 87, 92, 98, 105, 108, 111, 112, 113, 114, (133), 147

Libyan Arab Jamahiriya

20 reports requested

- 1 report received: Convention No. 122
- 19 reports not received: Conventions Nos. 1, 14, 29, 52, 53, 88, 89, 95, 96, 98, 100, 102, 103, 105, 118, 121, 128, 130, 138

Lithuania

18 reports requested

- All reports received: Conventions Nos. 1, 11, 27, 29, 47, 79, 87, 88, 90, 100, 127, 131, 135, 142, 154, 159, 171, 173

Luxembourg

13 reports requested

- All reports received: Conventions Nos. 1, 2, 8, 27, 29, 30, 87, 88, 96, 100, 108, 130, 147

Madagascar

13 reports requested

- No reports received: Conventions Nos. 5, 26, 29, 81, 87, 100, 111, 117, 118, 119, 120, 122, 129

Malawi

9 reports requested

- 6 reports received: Conventions Nos. 26, 81, 98, 99, 111, 144
- 3 reports not received: Conventions Nos. 45, 100, 129

Malaysia

5 reports requested

- 4 reports received: Conventions Nos. 29, 88, 98, 119
- 1 report not received: Convention No. 81

Peninsular Malaysia

2 reports requested

- 1 report received: Convention No. 19
- 1 report not received: Convention No. 45

Sabah

2 reports requested

- 1 report received: Convention No. 97
- 1 report not received: Convention No. 16

Sarawak

3 reports requested

- 1 report received: Convention No. 19
- 2 reports not received: Conventions Nos. 7, 16

Mali

13 reports requested

- No reports received: Conventions Nos. 5, 26, 29, 81, 87, 98, 100, 105, 111, (135), (141), (151), (159)

Malta

25 reports requested

- 6 reports received: Conventions Nos. 73, 81, 98, 105, 111, 119
- 19 reports not received: Conventions Nos. 1, 2, 8, 16, 19, 29, 32, 45, 87, 88, 96, 100, 108, 117, 129, 131, 135, 136, 141

Mauritania

12 reports requested

- No reports received: Conventions Nos. 5, 19, 29, 33, 58, 84, 87, 91, 96, 112, 118, 122

Mauritius

7 reports requested

- All reports received: Conventions Nos. 2, 8, 29, 94, 108, 160, (175)

Mexico

14 reports requested

- 13 reports received: Conventions Nos. 8, 22, 27, 29, 30, 45, 87, 96, 100, 108, 142, 167, 169
- 1 report not received: Convention No. 118

Moldova, Republic of

11 reports requested

- No reports received: Conventions Nos. (81), (87), (88), (95), (98), (105), (111), (117), (122), (135), (144)

Mongolia

5 reports requested

- No reports received: Conventions Nos. 59, 87, 100, 122, (135)

Morocco

19 reports requested

- 18 reports received: Conventions Nos. 2, 26, 27, 29, 30, 45, 81, 98, 99, 100, 105, 111, 119, 129, 136, 146, 147, 158
- 1 report not received: Convention No. 122

Mozambique

7 reports requested

- All reports received: Conventions Nos. 1, 30, (87), 88, 100, 105, (122)

Myanmar

10 reports requested

- 4 reports received: Conventions Nos. 17, 26, 52, 87
- 6 reports not received: Conventions Nos. 1, 2, 16, 19, 27, 29

Namibia

3 reports requested

- All reports received: Conventions Nos. 87, (150), (158)

Nepal

4 reports requested

- All reports received: Conventions Nos. (98), 100, 131, (144)

Netherlands

14 reports requested

- 12 reports received: Conventions Nos. 8, 27, 29, 87, 88, 96, 100, 122, 129, 142, 145, 147
- 2 reports not received: Conventions Nos. 44, 45

New Zealand

12 reports requested

- All reports received: Conventions Nos. 8, 17, 29, 42, 44, 47, 59, 82, 88, 100, 122, 145

Nicaragua

18 reports requested

- All reports received: Conventions Nos. 1, 8, 12, 17, 24, 25, 27, 29, 30, 45, 87, 88, 100, 117, 122, 136, 140, 142

Niger

14 reports requested

- 6 reports received: Conventions Nos. 29, 81, 100, 105, 111, 119
- 8 reports not received: Conventions Nos. 87, 98, 117, 131, 135, 138, 142, 148

Nigeria

16 reports requested

- No reports received: Conventions Nos. 8, 19, 26, 29, 45, 58, 59, 81, 87, 88, 98, 100, 105, 133, (144), 155

Norway 19 reports requested

- All reports received: Conventions Nos. 8, 27, 29, 30, 47, 87, 88, (94), 96, 100, 108, 122, 129, 130, 142, 147, 167, 168, 169

Pakistan 7 reports requested

- All reports received: Conventions Nos. 1, 27, 29, 45, 59, 87, 96

Panama 18 reports requested

- 13 reports received: Conventions Nos. 8, 27, 29, 45, 87, 94, 100, 108, 110, 111, 122, 159, (160)
- 5 reports not received: Conventions Nos. 30, 88, 96, 114, 117

Papua New Guinea 6 reports requested

- 4 reports received: Conventions Nos. 2, 29, 45, 122
- 2 reports not received: Conventions Nos. 8, 27

Paraguay 12 reports requested

- No reports received: Conventions Nos. 1, 29, 30, 59, 60, 87, 100, 117, 119, 120, 122, 169

Peru 20 reports requested

- All reports received: Conventions Nos. 1, 8, 24, 25, 27, 29, 35, 36, 37, 38, 39, 40, 44, 59, 87, 88, 100, 102, 122, 169

Philippines 11 reports requested

- 5 reports received: Conventions Nos. 17, 19, 87, 118, 157
- 6 reports not received: Conventions Nos. 59, 88, 100, 110, 122, 144

Poland 20 reports requested

- All reports received: Conventions Nos. 2, 8, 27, 29, 35, 36, 37, 38, 39, 40, 45, 87, 96, 100, 108, 115, 122, 129, 142, 147

Portugal 19 reports requested

- All reports received: Conventions Nos. 1, 8, 23, 27, 29, 45, 87, 88, 96, 100, 102, 108, 115, 117, 122, 129, 142, 145, 147

Romania 14 reports requested

- All reports received: Conventions Nos. 1, 8, 27, 29, 87, 88, 100, 108, 117, 122, 129, 136, 138, 168

Russian Federation 11 reports requested

- 10 reports received: Conventions Nos. 27, 29, 45, 47, 87, 100, 108, 122, 142, 147
- 1 report not received: Convention No. 95

Rwanda 3 reports requested

- No reports received: Conventions Nos. 19, 87, 100

Saint Lucia 24 reports requested

- No reports received: Conventions Nos. 5, 7, 8, 11, 12, 14, 16, 17, 19, 26, 29, 50, 64, 65, 87, 94, 95, 97, 98, 100, 101, 105, 108, 111

San Marino 5 reports requested

- All reports received: Conventions Nos. 29, 87, 88, 100, 142

Sao Tome and Principe 8 reports requested

- No reports received: Conventions Nos. 87, 88, 98, 100, 106, 111, 144, 159

Saudi Arabia 5 reports requested

- All reports received: Conventions Nos. 1, 29, 30, 45, 100

Senegal 10 reports requested

- No reports received: Conventions Nos. 5, 26, 29, 87, 96, 100, 102, 111, 117, 122

Seychelles

11 reports requested

- 3 reports received: Conventions Nos. 26, 58, 99
- 8 reports not received: Conventions Nos. 2, 5, 8, 29, 87, 105, 108, (149)

Sierra Leone

25 reports requested

- No reports received: Conventions Nos. 8, 16, 19, 22, 26, 29, 32, 45, 58, 59, 81, 87, 88, 94, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126, 144

Singapore

5 reports requested

- All reports received: Conventions Nos. 5, 8, 29, 45, 88

Slovakia

14 reports requested

- 13 reports received: Conventions Nos. 1, 27, 29, 34, 45, 87, 88, 100, 122, 136, 142, 161, 167
- 1 report not received: Convention No. 130

Slovenia

17 reports requested

- 15 reports received: Conventions Nos. 8, 9, 27, 29, 45, 87, 88, 91, 92, 102, 103, 126, 129, 136, 142
- 2 reports not received: Conventions Nos. 100, 122

Solomon Islands

6 reports requested

- No reports received: Conventions Nos. 8, 29, 42, 45, 84, 108

Somalia

12 reports requested

- No reports received: Conventions Nos. 16, 17, 19, 22, 23, 29, 45, 84, 94, 95, 105, 111

South Africa

4 reports requested

- All reports received: Conventions Nos. 2, 45, (87), (98)

Spain

19 reports requested

- All reports received: Conventions Nos. 1, 8, 27, 29, 30, 44, 45, 87, 88, 96, 100, 102, 108, 117, 122, 129, 136, 142, 147

Sri Lanka

14 reports requested

- 12 reports received: Conventions Nos. 8, 29, 45, 81, 87, 98, 100, 103, (108), 131, 135, 160
- 2 reports not received: Conventions Nos. 5, 96

Sudan

6 reports requested

- All reports received: Conventions Nos. 2, 29, 100, 111, 117, 122

Suriname

10 reports requested

- All reports received: Conventions Nos. 27, 29, 87, 88, 96, (98), 112, 122, 144, (154)

Swaziland

7 reports requested

- 6 reports received: Conventions Nos. 29, 45, 59, 87, 100, 111
- 1 report not received: Convention No. 96

Sweden

23 reports requested

- 21 reports received: Conventions Nos. 8, 16, 27, 29, 47, 73, 87, 88, 92, 100, 108, 111, 122, 129, 130, 133, 134, 142, 152, 167, 168
- 2 reports not received: Conventions Nos. 147, 164

Switzerland

12 reports requested

- All reports received: Conventions Nos. 2, 5, 8, 27, 29, 45, 87, 88, 100, 136, 142, 168

Syrian Arab Republic

12 reports requested

- All reports received: Conventions Nos. 1, 2, 29, 30, 45, 87, 88, 96, 100, 117, 129, 136

Tajikistan 19 reports requested

- No reports received: Conventions Nos. 27, 29, 45, 47, 87, 92, 98, 100, 103, 108, 111, 119, 120, 122, 126, 133, 142, 147, 160

Tanzania , United Republic of 12 reports requested

- 6 reports received: Conventions Nos. 98, 105, 131, 135, 144, 152
- 6 reports not received: Conventions Nos. 29, 59, 84, 134, 137, 142

Tanganyika 4 reports requested

- 2 reports received: Conventions Nos. 81, 88
- 2 reports not received: Conventions Nos. 45, 108

Zanzibar 3 reports requested

- No reports received: Conventions Nos. 5, 58, 97

Thailand 3 reports requested

- 2 reports received: Conventions Nos. 29, 122
- 1 report not received: Convention No. 88

The former Yugoslav Republic of Macedonia 12 reports requested

- No reports received: Conventions Nos. 2, 8, 27, 29, 45, 87, 88, 100, 122, 129, 136, 142

Togo 3 reports requested

- No reports received: Conventions Nos. 29, 87, 100

Trinidad and Tobago 5 reports requested

- All reports received: Conventions Nos. 29, 87, 98, 111, (144)

Tunisia 10 reports requested

- All reports received: Conventions Nos. 8, 29, 45, 87, 88, 100, 108, 117, 122, 142

Turkey 13 reports requested

- 12 reports received: Conventions Nos. 45, 58, 59, 87, 88, 95, 96, 98, 99, 100, 122, 142
- 1 report not received: Convention No. 26

Uganda 6 reports requested

- 1 report received: Convention No. 81
- 5 reports not received: Conventions Nos. 5, 17, 29, 45, 122

Ukraine 14 reports requested

- All reports received: Conventions Nos. 2, 27, 29, 45, 47, 87, 95, 100, 108, 122, 142, 147, 154, 158

United Arab Emirates 2 reports requested

- All reports received: Conventions Nos. 1, 29

United Kingdom 14 reports requested

- All reports received: Conventions Nos. 2, 5, 8, 29, 44, 82, 87, 100, 102, 108, 115, 122, 142, 147

United States 1 report requested

- All reports received: Convention No. 147

Uruguay 15 reports requested

- All reports received: Conventions Nos. 1, 8, 27, 29, 30, 87, 96, 100, 103, 108, 122, 129, 130, 131, 136

Uzbekistan 6 reports requested

- No reports received: Conventions Nos. 29, (47), (52), 100, (103), (122)

Venezuela 21 reports requested

- All reports received: Conventions Nos. 1, 26, 27, 29, 45, 87, 88, 100, 102, 105, 111, 117, 118, 121, 122, 128, 130, 141, 142, 153, 158

Viet Nam **3 reports requested**

- All reports received: Conventions Nos. 5, 27, 45

Yemen **20 reports requested**

- 17 reports received: Conventions Nos. 14, 16, 29, 58, 59, 81, 87, 98, 100, 105, 111, 122, 131, 132, 135, 158, (159)
- 3 reports not received: Conventions Nos. 19, 94, 156

Zambia **10 reports requested**

- 9 reports received: Conventions Nos. 45, (87), (98), 100, 105, 117, 122, 136, 141
- 1 report not received: Convention No. 29

Zimbabwe **3 reports requested**

- All reports received: Conventions Nos. 45, 100, 129

Grand Total

A total of 2,036 reports were requested, of which 1,264 reports (62.1 per cent) were received.

Appendix II. Statistical table of reports received on ratified Conventions as at 11 December 1998

(article 22 of the Constitution)

Period	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee		Reports received in time for the session of the Conference	
		Number	Percentage	Number	Percentage	Number	Percentage
1931-1932	447	–	–	406	90.8	423	94.6
1932-1933	522	–	–	435	83.3	453	86.7
1933-1934	601	–	–	508	84.5	544	90.5
1934-1935	630	–	–	584	92.7	620	98.4
1935-1936	662	–	–	577	87.2	604	91.2
1936-1937	702	–	–	580	82.6	634	90.3
1937-1938	748	–	–	616	82.4	635	84.9
1938-1939	766	–	–	588	76.8	–	–
1943-1944	583	–	–	251	43.1	314	53.9
1944-1945	725	–	–	351	48.4	523	72.2
1945-1946	731	–	–	370	50.6	578	79.1
1946-1947	763	–	–	581	76.1	666	87.3
1947-1948	799	–	–	521	65.2	648	81.1
1948-1949	806	134 [1]	16.6	666	82.6	695	86.2
1949-1950	831	253	30.4	597	71.8	666	80.1
1950-1951	907	288	31.7	507	77.7	761	83.9
1951-1952	981	268	27.3	743	75.7	826	84.2
1952-1953	1 026	212	20.6	840	81.8	917	89.3
1953-1954	1 175	268	22.8	1 077	91.7	1 119	95.2
1954-1955	1 234	283	22.9	1 063	86.1	1 170	94.8
1955-1956	1 333	332	24.9	1 234	92.5	1 283	96.2
1956-1957	1 418	210	14.7	1 295	91.3	1 349	95.1
1957-1958	1 558	340	21.8	1 484	95.2	1 509	96.8
1958-1959	995 [2]	200	20.4	864	86.8	902	90.6
1958-1960	1 100	256	23.2	838	76.1	963	87.4
1959-1961	1 362	243	18.1	1 090	80.0	1 142	83.8
1960-1962	1 309	200	15.5	1 059	80.9	1 121	85.6
1961-1963	1 624	280	17.2	1 314	80.9	1 430	88.0
1962-1964	1 495	213	14.2	1 268	84.8	1 356	90.7
1963-1965	1 700	282	16.6	1 444	84.9	1 527	89.8
1964-1966	1 562	245	16.3	1 330	85.1	1 395	89.3
1965-1967	1 883	323	17.4	1 551	84.5	1 643	89.6
1966-1968	1 647	281	17.1	1 409	85.5	1 470	89.1
1967-1969	1 821	249	13.4	1 501	82.4	1 601	87.9

Period	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee		Reports received in time for the session of the Conference	
		Number	Percentage	Number	Percentage	Number	Percentage
1968-1970	1 894	360	18.9	1 463	77.0	1 549	81.6
1969-1971	1 992	237	11.8	1 504	75.5	1 707	85.6
1970-1972	2 025	297	14.6	1 572	77.6	1 753	86.5
1971-1973	2 048	300	14.6	1 521	74.3	1 691	82.5
1972-1974	2 189	370	16.5	1 854	84.6	1 958	89.4
1973-1975	2 034	301	14.8	1 663	81.7	1 764	86.7
1974-1976	2 200	292	13.2	1 831	83.0	1 914	87.0
-1977	1 529 [3]	215	14.0	1 120	73.2	1 328	87.0
-1978	1 701	251	14.7	1 289	75.7	1 391	81.7
-1979	1 593	234	14.7	1 270	79.8	1 376	86.4
-1980	1 581	168	10.6	1 302	82.2	1 437	90.8
-1981	1 543	127	8.1	1 210	78.4	1 340	86.7
-1982	1 695	332	19.4	1 382	81.4	1 493	88.0
-1983	1 737	236	13.5	1 388	79.9	1 558	89.6
-1984	1 669	189	11.3	1 286	77.0	1 412	84.6
-1985	1 666	189	11.3	1 312	78.7	1 471	88.2
-1986	1 752	207	11.8	1 388	79.2	1 529	87.3
-1987	1 793	171	9.5	1 408	78.4	1 542	86.0
-1988	1 636	149	9.0	1 230	75.9	1 384	84.4
-1989	1 719	196	11.4	1 256	73.0	1 409	81.9
-1990	1 958	192	9.8	1 409	71.9	1 639	83.7
-1991	2 010	271	13.4	1 411	69.9	1 544	76.8
-1992	1 824	313	17.1	1 194	65.4	1 384	75.8
-1993	1 906	471	24.7	1 233	64.6	1 473	77.2
-1994	2 290	370	16.1	1 573	68.7	1 879	82.0
-1995	1 252 [4]	479	38.2	824	65.8	988	78.9
-1996	1 806 [5]	362	20.5	1 145	63.3	1 413	78.2
-1997	1 927	553	28.7	1 211	62.8	1 438	74.6
-1998	2 036	463	22.7	1 171	57.5	1 264	62.1

[1] First year for which this figure is available.

[2] As a result of a decision by the Governing Body, detailed reports were requested as from 1958-59 until 1976 only on certain ratified Conventions.

[3] As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.

[4] As a result of a decision by the Governing Body (November 1993), detailed reports on only five ratified Conventions were exceptionally requested in 1995.

[5] As a result of a decision by the Governing Body (November 1993), reports are now requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.

II. Observations on the application of Conventions in non-metropolitan territories

(article 22 and article 35, paragraphs 6 and 8,
of the Constitution)

A. General observations

Denmark

Faeroe Islands

The Committee notes with regret that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Australia* (Norfolk Island), *France* (French Guiana, French Polynesia, French Southern Antarctic Territories, Guadeloupe, Martinique, St. Pierre and Miquelon), *Netherlands* (Aruba), *United States* (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, Virgin Islands).

B. Individual observations

Convention No. 3: Maternity Protection, 1919

A request regarding certain points is being addressed directly to *Australia* (Norfolk Island).

Convention No. 5: Minimum Age (Industry), 1919

United Kingdom

Isle of Man

The Committee notes that, according to the Government's report, local bye-laws provide for the hours young people over the age of 13 years and under school leaving age may work. It recalls that in a report received in 1987 the Government indicated that the upper limit of compulsory schooling and the minimum age for admission to employment were raised to 16 years by the Education (Compulsory School Age) Act 1971 (Appointed Day) Order 1985.

The Committee recalls that the Convention prohibits the employment or work of children under the age of 14 years in any industrial undertaking other than an undertaking in which only members of the same family are employed. The only exception provided for in the Convention concerns work done in technical schools. In view of the apparent contradiction between the two indications noted above, the Committee requests the

Government to indicate the legislative provisions currently in force to give effect to the provisions of the Convention.

The Committee also requests the Government to provide information on the practical application of the Convention as required in *point V of the report form*, including, for example, more details of juvenile employment cards, extracts from official reports, and information on the inspection visits made and the number and nature of contraventions reported.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Denmark* (Greenland), *France* (French Polynesia, New Caledonia, Reunion), *United Kingdom* (Guernsey, Jersey).

Convention No. 8: Unemployment Indemnity (Shipwreck), 1920

France

French Southern and Antarctic Territories

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> With reference to its previous comments, the Committee notes that the Government's report provides no new information apart from the text of Decree No. 97-243 of 14 March 1997 regarding the registration of certain categories of vessels.
>
> The Committee recalls that the legislation applying to vessels registered in the French Southern and Antarctic Territories, namely the Overseas Labour Code of 1952 and Chapter VI, section 26, of Act No. 96-151 with respect to the registration of vessels in these territories, contain no provisions on indemnities to be paid to seafarers in the event of shipwreck. It notes that, despite the Government's assurances, no regulations have been issued to fill the void. Consequently, the Committee cannot but stress once again that under *Article 2 of the Convention* the unemployment indemnity due to seamen in every case of loss or foundering of any vessel, shall be paid for the days during which the seaman remains unemployed, for a minimum of two months. The Committee trusts that measures will be taken very shortly to ensure that the provisions of the Convention are fully applied to the French Southern and Antarctic Territories, and would be grateful if the Government would provide information on all such measures.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 9: Placing of Seamen, 1920

Requests regarding certain points are being addressed directly to the following States: *Denmark* (Faeroe Islands), *France* (French Polynesia).

Convention No. 12: Workmen's Compensation (Agriculture), 1921

A request regarding certain points is being addressed directly to *Australia* (Norfolk Island).

Convention No. 13: White Lead (Painting), 1921

A request regarding certain points is being addressed directly to *France* (French Polynesia).

Convention No. 14: Weekly Rest (Industry), 1921

Requests regarding certain points are being addressed directly to the following States: *Denmark* (Greenland), *Netherlands* (Aruba).

Convention No. 16: Medical Examination of Young Persons (Sea), 1921

A request regarding certain points is being addressed directly to *Denmark* (Faeroe Islands).

Convention No. 17: Workmen's Compensation (Accidents), 1925

A request regarding certain points is being addressed directly to *Australia* (Norfolk Island).

Convention No. 19: Equality of Treatment (Accident Compensation), 1925

France

French Polynesia

The Committee notes with regret that for the third time in succession the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1, paragraph 2, of the Convention.* In reply to the Committee's previous comments, the Government states that the governing council of the Social Insurance Fund issued a favourable opinion at its meeting on 26 February 1993 for the amendment of section 29 of Decree No. 57-245 of 24 February 1957, with a view to ensuring that the nationals of a member State that has ratified the Convention are granted the same benefits as French insured persons, without any condition as to residence. It adds that the draft Decision for this purpose, which was transmitted on 21 April 1993 by the labour inspection service to the Government of French Polynesia, has still to be examined by the Territorial Assembly. The Committee takes due note of this information. It hopes that the above draft text will be adopted in the near future and that the Government will not fail to provide a copy of it as soon as it is adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, a request regarding certain points is being addressed directly to *Australia* (Norfolk Island).

Convention No. 22: Seamen's Articles of Agreement, 1926

France

French Southern and Antarctic Territories

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes that the Government's report does not reply to the points raised. It is therefore obliged to repeat its previous observation concerning the following points:
>
> The Committee recalls that, under the Labour Code, seamen's articles of agreement are governed by special provisions contained in the Maritime Labour Code — CTM (Act of 13 December 1926). Under the general provisions of this Code, and in view of the specific nature of maritime work, any contract concluded between a shipowner or his representative and a seafarer, whose object is the performance of a service on board ship for the purpose of a voyage, is a maritime labour contract governed by the provisions of this Act.
>
> The Committee also notes that section 4 of the CTM provides that maritime labour contracts are governed by two sets of provisions: by the CTM for the periods in which the seafarer is on board, and by the Labour Code outside these periods.
>
> However, the Committee recalls that the contracts of seafarers employed on ships registered in the French Southern and Antarctic Territories (TAAF) are subject to the provisions of the Overseas Labour Code (CTOM), section 30 of which states that the applicable legislation is that of the place at which the contract is executed (*lex loci solutionis*). The Committee points out that the CTOM contains no maritime provisions and so does not make the distinction between the two sets of provisions applying to seafarers' contracts under section 4 of the CTM. It notes, however, that the CTOM takes precedence (section 30), and that its geographical scope extends to the antarctic territories and in part to the island of Mayotte.
>
> With regard to the legal status of contracts of seafarers on board ships registered in the TAAF, the Committee asks the Government to state whether, as indicated in the text of the *Provisional instructions concerning observance of the application to foreign seafarers of the conditions of employment in force on board vessels registered in the French Southern and Antarctic Territories*, these contracts are indeed maritime labour contracts, or ordinary labour contracts, and to indicate in which sectors, other than the maritime sector, economic activities are conducted in the TAAF.
>
> The Committee also notes that the magistrate's court of Saint-Denis, Réunion, has jurisdiction for individual labour disputes between shipowners and seafarers, for interpreting contracts, or annulling clauses of such contracts.
>
> With regard to the interpretation of contracts and the applicable law (French or foreign), the Committee notes the Standard Employment Contract Governing the Employment of all Filipino Seamen on Board Ocean-Going Vessels) established by the *Philippine Overseas Employment Administration* (POEA). It notes, inter alia, that section J (applicable law) states that the laws of the Philippines and international treaties ratified by the Philippines apply to all employment contracts of Filipino seamen. The Philippines has not ratified the Seamen's Articles of Agreement Convention, 1926 (No. 22). According to section I (Jurisdiction) of the above Standard Employment Contract, the POEA has original and exclusive jurisdiction over any disputes arising out of the contract.
>
> The Committee notes from the Government's report that no individual or collective disputes concerning the application of this Convention have been registered. It requests the Government to state (i) the law which applies to the contract(s) of seafarers employed on vessels registered in the TAAF in the case of both contracts of French seafarers (or assimilated) and contracts of non-resident foreign seafarers hired under a service contract concluded with the shipowner and a company governed by foreign law, responsible for crew

recruitment, and (ii) the venue for litigation from French and foreign seafarers employed on vessels registered in the TAAF.

The Committee recalls that, as regards the applicable labour law, when registration is transferred to the TAAF the contracts concluded by seafarers to work on ships previously registered in a port of metropolitan France, an overseas department or an overseas territory (other than the TAAF), are no longer governed by the CTM, but by the CTOM. The Committee trusts that the Government will not fail to provide answers to these points.

Furthermore, in its comments, the French Democratic Confederation of Labour (CFDT) recalls its opposition to registration of commercial vessels in the TAAF, and wonders why the Overseas Labour Code should be applicable for merchant vessels which only call at ports in metropolitan France.

The Committee requests the Government to reply to these points.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 25: Sickness Insurance (Agriculture), 1927

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 26: Minimum Wage-Fixing Machinery, 1928

Requests regarding certain points are being addressed directly to the *United Kingdom* (British Virgin Islands, Montserrat).

Convention No. 29: Forced Labour, 1930

Requests regarding certain points are being addressed directly to the following States: *France* (French Polynesia, New Caledonia), *Netherlands* (Aruba).

Convention No. 35: Old-Age Insurance (Industry, etc.), 1933

France

French Guiana

The Committee notes that according to the information provided by the French Government, within the framework of its report concerning the application of Convention No. 35, the adoption of Act No. 98-349 of 11 May 1998, respecting the entry and residence of foreigners in France and the right of asylum, under which section 42 abolishes any condition of nationality for the granting of non-contributory benefits (benefits for disabled persons, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis.

The Committee requests the Government to indicate whether this provision has been extended to the whole of the territory of French Guiana.

Guadeloupe

The Committee notes that according to the information provided by the French Government, within the framework of its report concerning the application of Convention No. 35, the adoption of Act No. 98-349 of 11 May 1998, respecting the entry and residence of foreigners in France and the right of asylum, under which section 42 abolishes any condition of nationality for the granting of non-contributory benefits (benefits for disabled persons, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis.

The Committee requests the Government to indicate whether this provision has been extended to the whole of the territory of Guadeloupe.

Martinique

The Committee notes that according to the information provided by the French Government, within the framework of its report concerning the application of Convention No. 35, the adoption of Act No. 98-349 of 11 May 1998, respecting the entry and residence of foreigners in France and the right of asylum, under which section 42 abolishes any condition of nationality for the granting of non-contributory benefits (benefits for disabled persons, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis.

The Committee requests the Government to indicate whether this provision has been extended to the whole of the territory of Martinique.

Réunion

The Committee notes that according to the information provided by the French Government, within the framework of its report concerning the application of Convention No. 35, the adoption of Act No. 98-349 of 11 May 1998, respecting the entry and residence of foreigners in France and the right of asylum, under which section 42 abolishes any condition of nationality for the granting of non-contributory benefits (benefits for disabled persons, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis.

The Committee requests the Government to indicate whether this provision has been extended to the whole of the territory of Réunion.

Convention No. 36: Old-Age Insurance (Agriculture), 1933

France

French Guiana

See under Convention No. 35.

Guadeloupe

See under Convention No. 35.

Martinique

See under Convention No. 35.

Réunion

See under Convention No. 35.

Convention No. 37: Invalidity Insurance (Industry, etc.), 1933

France

French Guiana

See under Convention No. 35.

Guadeloupe

See under Convention No. 35.

Martinique

See under Convention No. 35.

Réunion

See under Convention No. 35.

Convention No. 38: Invalidity Insurance (Agriculture), 1933

France

French Guiana

See under Convention No. 35.

Guadeloupe

See under Convention No. 35.

Martinique

See under Convention No. 35.

Réunion

See under Convention No. 35.

Convention No. 44: Unemployment Provision, 1934

Information supplied by *France* (St. Pierre and Miquelon) in answer to a direct request has been noted by the Committee.

Convention No. 53: Officers' Competency Certificates, 1936

A request regarding certain points is being addressed directly to *France* (French Polynesia).

Convention No. 59: Minimum Age (Industry) (Revised), 1937

Requests regarding certain points are being addressed directly to the *United Kingdom* (Bermuda, Falkland Islands (Malvinas), Monserrat).

Information supplied by the *United Kingdom* (St. Helena) in answer to a direct request has been noted by the Committee.

Convention No. 69: Certification of Ships' Cooks, 1946

A request regarding certain points is being addressed directly to *France* (French Polynesia).

Convention No. 73: Medical Examination (Seafarers), 1946

France

French Southern and Antarctic Territories

The Committee takes note of the statement made by the Government representative to the Conference Committee on the Application of Standards in 1998 as well as of the discussion which took place in the Committee.

The Committee notes that in relation to its previous comments the Government announced to the Conference Committee that it had submitted to the Council of State a draft ordinance which would empower officers and officials of the ministry responsible for the merchant marine to report, in France and in the non-metropolitan territories, violations of the provisions applicable to seafarers serving on vessels registered in the non-metropolitan territories which entered French ports; the supervision of vessels in foreign ports would be entrusted to the consular authorities. The Government representative stated that in this way, it would be possible to ensure effective supervision of the working conditions of national seafarers, including medical examinations, in French and foreign ports. He mentioned that the consular authority responsible for identifying violations would establish a list of physicians who would conduct the examinations, in compliance with the supervisory functions entrusted to it by decree of June 1996; and that it would most often be the physician assigned to the consular personnel or French officials residing abroad who would be designated to conduct the medical examinations provided for by the Convention.

The Committee notes however that the requested detailed report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information supplied in the Government's report.
>
> 1. *Statistics of seafarers' medical examinations.* In its previous comments, the Committee requested the Government to provide statistics of medical examinations conducted for French (and assimilated) seafarers as well as for foreign seafarers. On this point, the Committee notes that seafarers not residing in France may undergo or renew their periodical

medical examinations with physicians in their place of residence which, according to the Government, is the usual practice.

The Committee notes, however, that no statistics are yet available for 1996 in regard to medical examinations for seafarers residing abroad. It hopes to receive these statistics very shortly and, meanwhile, would like to receive statistics from previous years.

2. *Seafarers' physical fitness examinations.* The Committee recalls the comments made by the French Democratic Confederation of Labour (CFDT) in 1995 and repeated in 1996, to the effect that, in most cases, a medical examination for seafarers employed on vessels registered in the TAAF is not carried out. On this point, the Committee requests the Government, once again, to supply information on the application in practice of the Convention.

3. *Medical certificate attesting to fitness for maritime navigation.* While noting the introduction in the future of a new medical certificate, the Committee wonders as to the practical application and supervision procedures concerning, according to the statistics supplied by the Government, two-thirds of the seafarers employed on TAAF-registered vessels who are not nationals of the European Union. Since the customary practice for this category of personnel is to undergo medical examination abroad — often in countries which have not ratified the Convention — the Committee requests the Government, once again, to state the criteria for the approval of doctors *registered* with the French consular authorities to conduct medical examinations for seafarers, and the means of supervising such examinations, in accordance with *Article 3 of the Convention*. The Committee would also like to know the distinction between a physician registered *(médecin déclaré)* with the French consular authorities and an accredited physician *(médecin habilité)* to conduct the examination.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Convention No. 81: Labour Inspection, 1947 [and Protocol, 1995]

France

Martinique

Articles 3, 11 and 16 of the Convention. The Committee notes the information given in the Government's report concerning the organization and powers of the labour inspection service within a single structure for industrial, commercial and agricultural sectors. The Committee notes that the tasks of labour inspection are carried out by the departmental director, one labour inspector and four assistant labour inspectors. The Committee notes that, according to the Government, while staffing is sufficient to allow inspection tasks to be carried out, the large number of administrative tasks and the many different meetings which the inspectors are required to attend prevent them from adequately carrying out their main tasks of inspection, for which they are required to be present at workplaces or receive visits from the social partners. The Committee also notes the information according to which the inspectors do not have a service vehicle for travelling to workplaces. Such a situation indicates that efforts need to be made to ensure the proper application of these provisions of the Convention. The Government is therefore asked to implement measures to relieve labour inspectors of tasks other than those set out in *Article 3, paragraph 1,* and to provide, in accordance with *Article 3, paragraph 1(b),* the means of transport needed to allow them to comply with the requirements of *Article 16,* under the terms of which workplaces must be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions, and to provide in its next report any information concerning developments in this regard.

Articles 20 and 21. The Committee notes that no annual report on the activities of the labour inspection service has been received by the ILO. The Committee hopes that in future such reports, publication and transmission of which is required under *Article 20* and the content of which is set out in *Article 21*, will be sent regularly to the Office.

* * *

In addition, a request regarding certain points is being addressed directly to *France* (New Caledonia).

Convention No. 82: Social Policy (Non-Metropolitan Territories), 1947

France

French Polynesia

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> The Committee notes that, at its 265th Session (March 1996), the Governing Body adopted the report of the Committee set up to examine the representation made by the World Federation of Trade Unions (WFTU) under article 24 of the ILO Constitution, alleging non-observance by France of the Labour Inspection Convention, 1947 (No. 81) and the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82). The allegations concerned the content and application of regulations on the training, certification and safety prescriptions (diving schedules) that are applicable to underwater divers employed on pearl farms, which were adopted by the authorities of French Polynesia in 1987. In its representation, the WFTU considered that, in view of the number of permanent disabilities or deaths among divers, these regulations were inadequate and deficient. In addition, they were discriminatory in that they barred divers trained in French Polynesia from access to employment in companies coming under the regulations of metropolitan France.
>
> In accordance with the recommendations set out in the above-mentioned report, the Government is asked to take all appropriate measures to ensure that the territorial regulation, the need for whose revision has been recognized, is brought into conformity with the requirements of Convention No. 82, inter alia by eliminating provisions that can result in indirect discrimination and by aligning training strictly with the requirements of professional diving. The Government is also asked to provide, in its reports on the application of the Convention, detailed information on the adoption of the laws and regulations to which it referred during the above procedure, in order to ensure the health and safety of professional divers in the territory of French Polynesia.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

[The Government is asked to report in detail in 1999.]

United Kingdom

Bermuda

The Committee notes the information provided in the Government's report in reply to its previous observation.

In its previous comments, the Committee recalled the request it made for a number of years asking the Government to take the necessary measures to ensure the application of the provisions prescribed by *Articles 15 and 16 of the Convention*. It also requested the

Government to provide detailed information on the collective agreements, custom and practice in this regard.

In reply to these comments, the Government states that there is no specific wage legislation that provides for the protection of wages as prescribed by *Articles 15 and 16* of the Convention. However, in 1994, the Minister for Labour requested the Labour Advisory Council to prepare a Code of good industrial relations practice. In June 1995, the Minister tabled this Code before the House of Parliament, together with a Guide to good employment practice. Both of these documents were produced with the cooperation of the social partners and focus on voluntary compliance. The Government further states that the provisions of *Articles 15 and 16* of the Convention are therefore observed by means of a series of collective agreements, custom and practice and the voluntary Codes set out above. According to the Government, there has been no decision as to whether or not any social need will be met by putting into place legislation or regulations to conform with the spirit of the Convention as it is anticipated that the Code and the Guide will reinforce established good practice amongst the social partners in Bermuda.

With reference to its previous comments, the Committee notes with regret that the Government did not provide the detailed information requested on the above-mentioned collective agreements, custom and practice in line with *Articles 15 and 16* of the Convention. The Committee again recalls in respect of *Article 16*, that it may be difficult, by means of local customs, to regulate the amount and the manner of repayment of advances in excess of this amount legally irrecoverable. Matters covered by *Article 15* as well would appear to call for *legal measures*, unless covered explicitly by collective agreements which are applied to *all* employed persons. The Committee therefore requests the Government to specify if these collective agreements cover all employed persons and to provide a copy of these documents. In case these collective agreements do not cover all employed persons, the Committee trusts the Government will shortly take *legal measures* to comply with the protection of wages, as prescribed by *Articles 15 and 16* of the Convention.

[The Government is asked to report in detail in 2000.]

* * *

In addition, a request regarding certain points is being addressed directly to the *United Kingdom* (Montserrat).

Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948

Requests regarding certain points are being addressed directly to the *Netherlands* (Aruba, Netherlands Antilles).

Convention No. 92: Accommodation of Crews (Revised), 1949

Requests regarding certain points are being addressed directly to the following States: *Denmark* (Faeroe Islands), *France* (French Guiana, Guadeloupe, Martinique, Réunion).

Convention No. 94: Labour Clauses (Public Contracts), 1949

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 95: Protection of Wages, 1949

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 99: Minimum Wage Fixing Machinery (Agriculture), 1951

Requests regarding certain points are being addressed directly to the *United Kingdom* (Isle of Man, Jersey).

Convention No. 100: Equal Remuneration, 1951

Requests regarding certain points are being addressed directly to the following States: *France* (French Guiana, Guadeloupe, Martinique, St. Pierre and Miquelon), *New Zealand* (Tokelau).

Convention No. 101: Holidays with Pay (Agriculture), 1952

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 105: Abolition of Forced Labour, 1957

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 106: Weekly Rest (Commerce and Offices), 1957

Requests regarding certain points are being addressed directly to the following States: *Denmark* (Greenland), *Netherlands* (Aruba, Netherlands Antilles).

Convention No. 111: Discrimination (Employment and Occupation), 1958

A request regarding certain points is being addressed directly to *France* (French Polynesia).

Convention No. 115: Radiation Protection, 1960

A request regarding certain points is being addressed directly to *France* (French Polynesia).

Convention No. 120: Hygiene (Commerce and Offices), 1964

A request regarding certain points is being addressed directly to *France* (French Polynesia).

Convention No. 122: Employment Policy, 1964

Requests regarding certain points are being addressed directly to the following States: *Australia* (Norfolk Island), *France* (French Polynesia, New Caledonia, St. Pierre and Miquelon), *Netherlands* (Aruba, Netherlands Antilles).

Convention No. 129: Labour Inspection (Agriculture), 1969

France

French Polynesia

The Committee takes note of the Government's reports covering the period from 1 July 1995 to 30 June 1997. It also takes note of the copies of annual inspection reports provided for the same period, and the 1995 agricultural census document attached to the previous report on the application of the Convention.

The Committee notes with regret that the last two reports received do not contain any information on the manner in which the Convention is applied in the establishments covered by the Convention and that the annual inspection reports to which the Government refers do not refer to any of the subjects listed in *points (a) to (g) of Article 27* concerning the agricultural sector.

With reference to its previous comments, in which it reiterated its request for detailed information on labour inspection in agriculture in the light of the points raised in 1985 in relation to Convention No. 81, the Committee recalls that it had expressed the hope that action would be taken to enable the labour inspection service to meet all its obligations throughout the territory. Given that the labour inspection service operates in all sectors of the economy, this referred implicitly to labour inspection in agriculture, since issues relating to human and material resources and the status of labour inspectors must be regulated in the same way for all the sectors covered by the service. The information supplied on these points in the annual inspection reports is general information for all sectors, and provides no useful indication as to the degree to which the provisions of the Convention are applied in the agricultural sector, on which the Government's most recent information was contained in its reports of 1991 and 1993. The Committee wishes to point out in this regard that, under *Article 4 of the Convention*, the system of labour inspection in agriculture shall apply to agricultural undertakings in which employees or apprentices work, however they may be remunerated and whatever the type, form or duration of their contract, and that under *Article 21*, agricultural undertakings must be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. The argument put forward by the Government in its report of 1993, that the very low level of activity by the inspection service in this sector is explained by the limited number of agricultural employees who have contributed to the Social Security Fund, is not relevant with regard to these provisions of the Convention, and suggests that the criteria used for identifying agricultural undertakings subject to labour inspection should be re-examined.

Noting recent developments in the situation of the labour inspection service characterized by conceptual and organizational difficulties faced by the decentralized state services and the territorial authorities, the Committee trusts that the Government will soon be in a position to report on positive developments in the situation with regard to the objectives of the Convention, and that it will be able to provide information on any progress made in giving effect to the provisions of the Convention, in accordance with the obligations imposed by the declaration of application of the instrument.

Martinique

The Government's reports show that, in contrast with the situation in metropolitan France, the Directorate of Agriculture and Forests provides no material resources for labour inspection in agriculture. The Committee notes that, despite the requests made in a previous comments, no annual report on the activities of the labour and manpower inspection services in the Overseas Departments and in the Territorial Community of St. Pierre and Miquelon has been received by the ILO. The Committee recalls that the declaration of the application of an international labour Convention to a non-metropolitan territory involves the commitment to fulfil the obligations set out in the Convention. It therefore requests the Government to take all the necessary measures as soon as possible for the application of the provisions of the Convention, not only in law, but also in practice, and to supply detailed information in its next report on this subject. It also hopes that annual inspection reports will be published in the near future and transmitted to the ILO, in accordance with *Article 26* of the Convention, and that they will contain the information required on all the subjects enumerated in *Article 27*.

* * *

In addition, requests regarding certain points are being addressed directly to *France* (French Guiana, Guadeloupe, New Caledonia, Réunion).

Convention No. 131: Minimum Wage Fixing, 1970

Requests regarding certain points are being addressed directly to *France* (French Guiana, French Polynesia, Guadeloupe, Martinique, New Caledonia, Réunion, St. Pierre and Miquelon), *Netherlands* (Aruba).

Convention No. 134: Prevention of Accidents (Seafarers), 1970

France

French Southern and Antarctic Territories

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the observation of the French Democratic Federation of Labour (CFDT), communicated by the Government in October 1996, to the effect that national legislation does not comply with a number of the provisions of international labour Conventions, including Convention No. 134. It notes that this observation does not indicate precisely the provisions which are not in conformity with the Convention.

The Committee notes the Government's statement to the effect that since Act No. 83-581 of 5 July 1983 relating to the protection of human life at sea, lodging on board ship and the prevention of pollution applies to all vessels registered in the French Republic, which includes the French Southern and Antarctic Territories (TAAF), there is therefore no difference in treatment between vessels registered in metropolitan France, in an overseas department, in the territorial community of Saint Pierre and Miquelon, in an overseas territory or in the French Southern and Antarctic Territories in regard to the application of this instrument and the regulations based on it. It requests the Government to refer to its general observation.

The Committee requests the Government to provide detailed information indicating the manner in which the Convention is applied to seafarers engaged on vessels registered in the TAAF, indicating in particular the measures taken to ensure that:

— all occupational accidents to seafarers are reported, comprehensive statistics of such accidents are kept and analysed, and accidents resulting in loss of life or serious personal injury are investigated *(Article 2 of the Convention)*;

— research is undertaken into general trends in occupational accidents to seafarers and the particular hazards of maritime employment *(Article 3)*;

— provisions concerning the prevention of accidents to seafarers are laid down by laws or other means containing references to any general provisions applicable to the work of seafarers and, in particular, to the structural features of ships, machinery, special safety measures on and below deck, loading and unloading equipment, fire prevention, anchors, chains and lines, dangerous cargo and ballast, and personal protective equipment *(Article 4)*;

— the provisions concerning the prevention of occupational accidents to seafarers specify clearly the obligation on shipowners, seafarers and others concerned to comply with them *(Article 5)*;

— the proper application of measures to prevent accidents to seafarers is ensured by means of adequate inspection or otherwise and copies or summaries of the relevant provisions are brought to the attention of seafarers *(Article 6)*;

— provision shall be made for the appointment of a suitable person or suitable persons or of a suitable committee responsible, under the Master, for accident prevention *(Article 7)*;

— programmes for the prevention of occupational accidents to seafarers are established and implemented with the participation of shipowners, seafarers or their representatives, and joint accident prevention committees or ad hoc working parties are established *(Article 8)*;

— the necessary instructions concerning particular hazards of maritime employment are brought to the attention of all seafarers *(Article 9)*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

[The Government is asked to report in detail in 1999.]

Convention No. 135: Workers' Representatives, 1971

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 136: Benzene, 1971

A request regarding certain points is being addressed directly to *France* (Martinique).

Convention No. 137: Dock Work, 1973

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 138: Minimum Age, 1973

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 140: Paid Educational Leave, 1974

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 142: Human Resources Development, 1975

Requests regarding certain points are being addressed directly to the following States: *France* (French Guiana, French Polynesia, Guadeloupe, Martinique, New Caledonia, St. Pierre and Miquelon), *Netherlands* (Aruba).

Convention No. 145: Continuity of Employment (Seafarers), 1976

Netherlands

Aruba

The Committee notes with regret that since 1994 a Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its comments formulated in December 1995, which read as follows:

> The Committee recalls the Government's statement to the effect that there are no merchant shipping undertakings in Aruba. It hopes that the Government will not fail to supply a detailed report on the application of the Convention in conformity with the report form, which will include, in particular, information on the following points:

Article 2, paragraphs 1 and 2, of the Convention. Please describe measures taken to encourage all concerned to provide continuous or regular employment for seafarers. Please indicate the minimum periods of employment or the minimum income or monetary allowance assured to seafarers and describe the manner in which they are assured.

Point III of the report form. Please indicate the authority or authorities responsible for the application of the laws and regulations mentioned in the Government's first report received in 1991.

Point V of the report form. Please give a general appreciation of the manner in which the Convention is applied in Aruba, including for instance extracts from reports of the authority or authorities referred to under point III above and, if available, particulars of the number of seafarers and of variations in their number during the period covered by the report.

Convention No. 146: Seafarers' Annual Leave with Pay, 1976

Requests regarding certain points are being addressed directly to the following States: *France* (French Southern and Antarctic Territories, Guadeloupe, Martinique, Réunion), *Netherlands* (Aruba).

Convention No. 147: Merchant Shipping (Minimum Standards), 1976 [and Protocol, 1996]

Information supplied by *France* (French Polynesia) in answer to a direct request has been noted by the Committee.

Convention No. 149: Nursing Personnel, 1977

France

Guadeloupe

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation concerning the following matters:

> With reference to its previous comments, the Committee notes that for many years the Government has not supplied a report on application of the Convention. In its last communication, it indicated that matters pertaining to nursing personnel did not fall within the competence of the Departmental Directorate of Labour, Employment and Occupational Training of Basse-Terre.
>
> The Committee recalls the obligation devolving on member States, pursuant to *article 22 of the ILO Constitution*, to present periodically a report on application of ratified Conventions, in accordance with the report form approved by the Governing Body. It hopes that in future the Government will not fail to meet its constitutional obligation to provide the report due on application of this Convention.

The Committee trusts that the Government will make every effort to take the necessary action in the very near future.

[The Government is asked to report in detail in 1999.]

* * *

In addition, requests regarding certain points are being addressed directly to *France* (Martinique, Réunion).

Appendix. Table of reports received on ratified Conventions (non-metropolitan territories) as at 11 December 1998

(articles 22 and 35 of the Constitution)

Article 22 of the Constitution of the International Labour Organization provides that "each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request". Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 204th (November 1977) Session, the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under articles 22 and 35 of the Constitution:

(a) the practice of tabular classification of reports, without summary of their contents, which has been followed for several years in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;

(b) the Director-General should make available, for consultation at the Conference, the original texts of all reports received on ratified Conventions; in addition, photocopies of the reports should be supplied on request to members of delegations.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification.

Reports received under articles 22 and 35 of the Constitution appear in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations; first reports are indicated in parentheses.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

Australia

2 reports received: 12 requested

Norfolk Island

12 reports requested

* 2 reports received: Conventions Nos. (17), 98
* 10 reports not received: Conventions Nos. 27, 29, (42), 47, 87, (100), 122, (131), 142, (156)

Denmark

3 reports received: 16 requested

Faeroe Islands

12 reports requested

* No reports received: Conventions Nos. 5, 7, 8, 9, 16, 27, 29, 87, 92, 98, 105, 126

Greenland

4 reports requested

* 3 reports received: Conventions Nos. 29, 87, 122
* 1 report not received: Convention No. 5

France

41 reports received: 156 requested

French Guiana

16 reports requested

* No reports received: Conventions Nos. 5, 8, 27, 29, 35, 36, 37, 38, 45, 87, 100, 108, 129, 136, 142, 147

French Polynesia

30 reports requested

* 11 reports received: Conventions Nos. 5, 29, 45, 87, 96, 100, 108, 129, 145, 146, 147
* 19 reports not received: Conventions Nos. 9, 13, 16, 19, 37, 38, 44, 53, 69, 73, 82, 88, 111, 115, 120, 122, 125, 126, 142

French Southern and Antarctic Territories

8 reports requested

* No reports received: Conventions Nos. 8, 22, 73, 87, 108, 134, 146, 147

Guadeloupe

33 reports requested

* No reports received: Conventions Nos. 3, 5, 8, 27, 29, 35, 36, 37, 38, 45, 58, 81, 87, 92, 98, 100, 105, 108, 111, 112, 120, 126, 129, 131, 133, 135, 136, 141, 142, 144, 146, 147, 149

Martinique

23 reports requested

* No reports received: Conventions Nos. 5, 8, 27, 29, 35, 36, 37, 38, 45, 58, 87, 92, 100, 108, 112, 123, 126, 129, 133, 136, 142, 146, 147

New Caledonia

14 reports requested

* All reports received: Conventions Nos. 5, 29, 44, 45, 82, 87, 88, 96, 100, 108, 122, 129, 142, 147

Reunion

16 reports requested

* All reports received: Conventions Nos. 5, 8, 27, 29, 35, 36, 37, 38, 45, 87, 100, 108, 129, 136, 142, 147

St. Pierre and Miquelon

16 reports requested

* No reports received: Conventions Nos. 5, 29, 35, 44, 45, 82, 87, 88, 96, 100, 108, 111, 122, 129, 142, 147

Netherlands

6 reports received: 29 requested

Aruba

23 reports requested

* No reports received: Conventions Nos. 8, 9, 11, 17, 25, 29, 45, 69, 74, 87, 88, 94, 95, 101, 122, 129, 135, 137, 138, 142, 145, 146, 147

Netherlands Antilles

6 reports requested

* All reports received: Conventions Nos. 8, 29, 45, 87, 88, 122

New Zealand

All reports received: 3 requested

Tokelau

3 reports requested

* All reports received: Conventions Nos. 29, 82, 100

United Kingdom

All reports received: 72 requested

Anguilla — 6 reports requested

- All reports received: Conventions Nos. 8, 29, 59, 82, 87, 108

Bermuda — 6 reports requested

- All reports received: Conventions Nos. 29, 59, 82, 87, 108, 147

British Virgin Islands — 6 reports requested

- All reports received: Conventions Nos. 8, 29, 59, 82, 87, 108

Falkland Islands (Malvinas) — 7 reports requested

- All reports received: Conventions Nos. 8, 29, 45, 59, 82, 87, 108

Gibraltar — 12 reports requested

- All reports received: Conventions Nos. 2, 8, 29, 44, 45, 59, 82, 87, 100, 108, 142, 147

Guernsey — 8 reports requested

- All reports received: Conventions Nos. 5, 8, 29, 44, 87, 108, 122, 142

Isle of Man — 8 reports requested

- All reports received: Conventions Nos. 5, 8, 29, 44, 87, 108, 122, 147

Jersey — 7 reports requested

- All reports received: Conventions Nos. 2, 5, 8, 29, 44, 87, 108

Montserrat — 6 reports requested

- All reports received: Conventions Nos. 8, 29, 59, 82, 87, 108

St. Helena — 6 reports requested

- All reports received: Conventions Nos. 8, 29, 59, 82, 87, 108

United States — No reports received: 5 requested

American Samoa — 1 report requested

- No reports received: Convention No. 147

Guam — 1 report requested

- No reports received: Convention No. 147

Northern Mariana Islands — 1 report requested

- No reports received: Convention No. 147

Puerto Rico — 1 report requested

- No reports received: Convention No. 147

United States Virgin Islands — 1 report requested

- No reports received: Convention No. 147

Grand Total

A total of 293 reports were requested, of which 127 (43.3 per cent) were received.

III. Observations concerning the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference

(article 19 of the Constitution)

Afghanistan

The Committee notes with regret that the Government has not replied to its previous observation. It hopes that the Government will shortly provide the information required under the Memorandum adopted by the Governing Body *(points I, II and III of the questionnaire)*, concerning the Conventions and Recommendations adopted at the 71st, 72nd, 74th, 75th and 76th Sessions of the Conference, which have already been submitted to the governmental bodies concerned. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions have been submitted.

Albania

The Committee notes the Government's statement that the People's Assembly of the Republic of Albania adopted the Private Employment Agencies Convention, 1997 (No. 181) on May 1998. However, the Committee notes that the Government has not replied to its previous observations and hopes it will indicate shortly that the instruments adopted at the 78th, 79th, 80th, 81st, 82nd, 83rd and 84th Sessions of the Conference have been submitted to the People's Assembly.

Angola

In the absence of a response to its previous comments, the Committee hopes that the Government will indicate soon that the instruments adopted at the 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Armenia

The Committee observes that the Government has not responded to its previous observations. It hopes that the Government will indicate soon that the instruments adopted at the 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Bangladesh

In the absence of a reply to its previous comments, the Committee hopes that the Government will soon be able to indicate whether the instruments adopted at the 77th (Convention No. 170 and Recommendation No. 177), 78th, 79th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Belgium

The Committee refers to the comments it has been making for several years and hopes that the Government will shortly be in a position to indicate whether the Indigenous and Tribal Peoples Convention, 1989 (No. 169), adopted at the 76th Session of the Conference as well as the instruments adopted at the 78th, 79th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to Parliament.

Belize

The Committee notes that the Government has not replied since 1994 to its previous observations. It hopes that the Government will indicate shortly that the instruments adopted at the 77th to 79th Sessions of the Conference have been submitted to the National Assembly, which has the power to legislate by virtue of articles 62 and 69 of the Constitution, and that the Government will supply the information and documents requested in the Memorandum adopted by the Governing Body. The Committee would also be grateful if the Government would indicate whether the instruments adopted at the 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted.

Benin

The Committee notes that the Minister of the Civil Service, Labour and Administrative Reform has transmitted the instruments adopted by the International Labour Conference between 1989 and 1997 to the President of the Republic with a view to their transmission to the President of the National Assembly for information. The Committee recalls that under the terms of article 19 of the Constitution, member States undertake to submit instruments adopted by the Conference to the competent authorities, for the enactment of legislation or other action. The Governing Body of the ILO, in its Memorandum of 1980, established the information that must be communicated for full compliance with the obligation of submission. In this regard, the Committee hopes that the Government will soon be in a position to provide the information and documents, required by the questionnaire reproduced at the end of the 1980 Memorandum, on the submission to the National Assembly of the instruments adopted by the Conference at its 78th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions.

Bolivia

The Committee notes that the Government has not replied to its previous comments. It hopes that it will shortly indicate that the instruments adopted at the 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Bosnia and Herzegovina

The Committee notes that the Government has not replied to its previous comments and hopes that it will indicate shortly that the instruments adopted at the 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Brazil

1. The Committee notes that the Tripartite Committee established to examine the Prevention of Major Industrial Accidents Convention, 1993 (No. 174) and the Prevention of Major Industrial Accidents Recommendation, 1993 (No. 181) has issued a favourable decision to ratify the above Convention which shall be transmitted to the Ministry of Labour with a view to submitting the Convention to the National Congress.

2. The Committee also notes that a Tripartite Committee was established in October 1998 to examine the instruments adopted at the 81st Session of the Conference in June 1994. The Committee recalls that another Committee had been established in October 1997 to examine the instruments adopted at the 83rd Session of the Conference in June 1996.

3. Under these circumstances, the Committee is bound to express the hope that the Government will continue to provide information on the consultations and efforts undertaken to submit the instruments adopted by the Conference to the competent authorities. In this regard, the Committee wishes to recall that compliance with this obligation implies the submission to the Federal Congress of Conventions Nos. 128 to 130, 149 to 151, 156 and 157 as well as the instruments adopted at the 52nd, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference.

Bulgaria

Following its previous observations, the Committee notes with interest the *Resolution on taking note of international Conventions, Protocols and Recommendations of the International Labour Organization*, adopted by the 38th National Assembly on 10 June 1998, regarding the submission of the instruments adopted by the International Labour Conference at its 79th to 85th Sessions. It also notes that it is a part of the Government's Bulgaria 2001 Programme to keep informed the relevant institutions for all international instruments as a prerequisite for their ratification. It hopes that the Government will also supply in the near future information on the submission to the National Assembly of the recommendations adopted at the 84th Session of the Conference (Recommendations Nos. 185, 186 and 187). It would be grateful if the Government would supply the indications requested on the content of the decision taken by the competent authority on the instruments submitted (*point III of the questionnaire* at the end of the Memorandum of 1980).

Cameroon

1. The Committee notes the statement made by a Government representative in June 1997 to the Conference Committee on the Application of Standards to the effect that it was not customary in his country to submit newly adopted instruments to the National Assembly but that this in its view was simply a problem of comprehension. The Committee recalls that under the terms of article 19 of the Constitution, Members are required to submit all instruments adopted by the Conference to the competent authority within 12 months or, exceptionally, 18 months of adoption. The Committee trusts that the Government will indicate soon that the instruments adopted between 1983 and 1997, that is to say at the 69th, 70th, 71st. 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 84th and 85th Sessions, have been submitted to the competent authorities and that it will provide the information and documents requested in the 1980 Memorandum.

2. The Committee trusts that the Government will take the necessary measures in the near future to overcome this serious delay in meeting the constitutional obligation of submission and recalls that the technical assistance of the ILO's competent services is available to the Government.

Central African Republic

1. In its previous observation, the Committee noted the information provided by the Government according to which it had initiated the procedure for submission to the competent authorities of the instruments adopted between 1979 and 1994. The Government also indicated that the instruments adopted at the 83rd Session had been submitted to the Government for examination and adoption. The Committee hopes that the Government will be able to indicate soon that the instruments adopted by the Conference at its 65th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th

and 85th Sessions have been submitted to the competent authorities and that it will provide all the information regarding these instruments requested in the 1980 Memorandum.

2. The Committee trusts that the Government will take the necessary measures in the near future to overcome the serious delay in fulfilling the constitutional obligation of submission, and recalls that the technical assistance of the competent services of the ILO is available to the Government.

Chad

The Committee notes that the instruments adopted at the 83rd and 84th Sessions of the Conference will be submitted to the competent authorities at the same time as the Minimum Age Convention, 1973 (No. 138) is "resubmitted" for ratification. The Committee hopes that the Government will indicate shortly that the instruments adopted at the 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities and that it will provide the information requested in the Memorandum of 1980 in this respect.

Chile

The Committee notes with interest that the Government has submitted the international labour Conventions and Recommendations adopted at the 75th, 78th, 79th, 80th, 81st and 83rd Sessions of the Conference to the Senate and Chamber of Deputies of the National Congress so that they can take note of these instruments.

Comoros

1. The Committee notes the documents presented to the State Commissioner for Labour in November 1997 by the General Labour Department with a view to submitting the instruments adopted by the 79th, 84th and 85th Sessions of the Conference to the Federal Assembly. The Committee recalls its previous observations and again hopes that the Government will shortly communicate the information required by the Memorandum of 1980 in respect of the date on which the instruments were submitted to the Federal Assembly and the substance of the decisions taken by the competent authority with regard to the instruments adopted at the 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference.

2. The Committee is also bound to draw the Government's attention to the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976, adopted by the Conference at the 84th (Maritime) Session (October 1996), which should be submitted to the Federal Assembly.

Congo

The Committee notes the information provided by the Government in June 1998 to the effect that the Government intends to gradually reduce the backlog which has accumulated in respect of the obligation to submit. Priority had been given to the Conventions on the basic work-related rights of workers, and five basic Conventions which have not been ratified by the Government are currently being submitted to Parliament. The Government resolutely intends to follow this course of action, with regard to the remaining instruments, and has requested the support and assistance of the Office. The Committee hopes that the competent departments of the ILO will give effect to the Government's request for assistance. The Committee trusts that the Government will shortly be in a position to provide information on the progress achieved and, in particular, that the instruments adopted at the 54th (Recommendations Nos. 135 and 136), 55th (Recommendations Nos. 137, 138, 139, 140, 141 and 142), 58th (Convention No. 137 and Recommendation No. 145), 60th (Conventions Nos. 141 and 143, Recommendations Nos. 149, 150 and 151), 61st (Recommendation No. 152), 62nd, 63rd (Recommendation No. 156), 67th (Recommendations Nos. 163, 164 and 165), 68th (Convention No. 157 and Recommendations Nos. 167 and 168), 69th, 70th, 71st (Recommendations Nos. 170 and 171), 72nd, 74th, 75th (Recommendations Nos. 175 and 176), 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Costa Rica

The Committee notes the Government's communications which refer to the consultations which took place within the Higher Labour Council in respect of the submission to the Legislative Assembly of the instruments adopted by the Conference. The Government indicates that consultation of the Higher Labour Council, necessary to enable the competent authority to enact the instruments approved by the Legislative Assembly, is the optimum of conditions in which to take a decision when the proposal is being examined by the Executive Power. The Committee reiterates its hope that the Government will continue to provide information in respect of the consultations held with the Higher Labour Council as well as the submission to the Legislative Assembly of the instruments adopted at the 75th (Convention No. 167), 78th (Recommendation No. 179), 79th (Recommendation No. 180), 80th, 81st (Recommendation No. 182), 82nd (1995 Protocol relating to Convention No. 81 and Recommendation No. 183), 83rd, 84th and 85th Sessions of the Conference.

Djibouti

1. With reference to its previous observation, the Committee trusts that the Government will indicate soon that the instruments adopted by the International Labour Conference at its 66th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 84th and 85th Session have been submitted to the competent authorities and that it will provide the information and documents requested in the 1980 Memorandum.

2. The Committee trusts that the Government will take the necessary measures in the near future to overcome this serious delay in meeting the constitutional obligation of submission and recalls that the technical assistance of the competent services of the ILO is available to the Government.

Dominica

The Committee notes the information supplied by the Government by which it indicates that the instruments adopted at the 80th, 81st, 82nd and 83rd Sessions were submitted to Cabinet and the Government has decided against ratification. The Committee refers to its previous direct requests, and recalls that the competent national authority to which the instruments adopted by the International Labour Conference should normally be submitted is the legislature (Part I of the Memorandum of 1980). It therefore hopes that the Government will announce soon that the instruments adopted at the 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities and that it will provide the information and documents requested in this respect in the Memorandum of 1980, in particular with regard to the nature of the proposals or comments by the competent authorities and by the Government on the measures to be taken in relation to the above mentioned instruments *(points I(a) and II(b) of the questionnaire* at the end of the Memorandum).

Ecuador

1. The Committee notes the ratification on 15 May 1998 of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), adopted at the 76th Session of the Conference. The Committee also notes with interest the detailed information transmitted by the Government in respect of the submission to the National Congress of the instruments adopted at the 83rd, 84th and 85th Sessions of the Conference.

2. The Committee notes that Seafarers' Union of Ecuador (UGEME), the General Workers' Union of Ecuador (UGTE) and the Confederation of Free Trade Unions of Ecuador (CEOSL) have formulated comments in respect of the submission of the instruments adopted at the 84th and 85th Sessions of the Conference. In accordance with *point V of the questionnaire* at the end of the Memorandum of 1980, the Committee would be grateful if the Government would provide information in respect of the comments formulated by above workers' organizations.

3. The Committee refers to its previous comments and trusts that the Government will continue to make every effort, in conformity with this constitutional obligation, to provide the information required by the Memorandum of 1980 in respect of the submission to the National Congress of the Conventions and Protocols adopted at the 75th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference.

4. The Committee considers it opportune to again recall that the obligation of governments to submit is applicable to Conventions, Recommendations and Protocols and does not imply any obligation to propose the ratification of Conventions or Protocols or the application of the Recommendations in question. Governments have complete freedom as to the nature of proposals to be made when submitting the instruments adopted at the Conference to the competent authorities.

El Salvador

1. With reference to its earlier observations, the Committee notes the fact that on 22 October 1996, 25 February 1997 and 13 May 1998 the Minister of Labour and Social Security submitted to the President of the Republic the International Labour Conventions and Recommendations adopted by the International Labour Conference at its 62nd, 65th, 66th, 67th, 68th, 70th, 82nd, 83rd and 84th Sessions, as well as the remaining instruments adopted at the 63rd Session (Convention No. 148 and Recommendations Nos. 156 and 157), 64th Session (Convention No. 151 and Recommendations Nos. 158 and 159) and 69th Session (Recommendation No. 167). The Committee recalls that for the constitutional obligation to submit instruments adopted by the International Labour Conference to the competent authorities to be fulfilled, the competent authority in question (in this case, the Congress of the Republic of El Salvador) must be in a position to take a decision regarding the instruments submitted to it. The Committee trusts that the Government will be able in the very near future to provide all the information requested in the 1980 Memorandum on the submission of the above-mentioned instruments to Congress.

2. In addition, the Committee takes note of the legislative studies prepared in relation to Conventions Nos. 100, 156, 176, 178, 179 and 180 and of the decision to submit these Conventions to the legislature. It notes with particular interest the proposals to ratify some of them. The Committee trusts that the Government will keep the Office informed of any measures taken in this regard.

3. The Committee also hopes that the Government will indicate in the near future that the instruments adopted by the International Labour Conference at its 85th Session have been submitted to the competent authority.

Equatorial Guinea

The Committee notes that the instruments adopted at the 84th Session of the Conference were submitted to the Chamber of People's Representatives on 13 June 1997. The Committee trusts that the Government will shortly provide the information requested in its Memorandum of 1980 in respect of submitting the instruments adopted at the 80th, 81st, 82nd, 83rd and 85th Sessions of the Conference to the competent authorities.

Eritrea

The Committee observes that the Government has not responded to its previous comments. It hopes that it will indicate soon that the instruments adopted at the 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Gabon

The Committee notes that the Government has not replied to its previous comments. It notes the statement of the Free Federation of Power, Mining and Similar Enterprises (FLEEMA) to the effect that the Government has not submitted the Safety and Health in Mines Convention, 1985 (No. 176), which was adopted by the International Labour Conference at its 82nd Session, to the competent authority for ratification. The Committee trusts that the Government will be in a position in the very near future to provide the information requested in the Memorandum of 1980 on submission to the National Assembly of the instruments adopted by the Conference at its 74th, 82nd, 83rd, 84th and 85th Sessions.

Georgia

The Committee regrets that the Government has not replied to its previous comments. It hopes that the Government will indicate shortly that the instruments adopted at the 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Ghana

The Committee regrets that the Government has not replied to its previous comments and hopes that the Government will indicate shortly that the instruments adopted at the 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Grenada

The Committee regrets that the Government has not replied to its previous comments. It hopes that the Government will indicate shortly that the instruments adopted at the 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Guatemala

1. The Committee noted in its previous observation the statement made by a Government representative to the Conference Committee on the Application of Standards in 1997 concerning the reasons for the delay in submitting to the competent authorities certain instruments adopted by the Conference. The Government expressed the hope that the situation would be overcome with the ILO's technical assistance. The Committee notes that no new information has been received on the submission to the competent authorities of the instruments adopted by the Conference. The Committee recalls that the instruments adopted at the 74th (Maritime) Session in October 1987, those adopted at the 75th Session in June 1988 (Convention No. 168 and Recommendation No. 176) and all those adopted at the 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions have yet to be submitted.

2. Under these circumstances, the Committee urges the Government to continue to make every effort to honour the constitutional obligation of submission, if necessary by obtaining technical assistance from the competent services of the ILO to allow it to overcome this serious delay.

Guinea

The Committee notes with interest that on 9 September 1998 the Minister of Employment and the Public Service transmitted to the President of the National Assembly a detailed survey concerning the instruments adopted by the International Labour Conference from its 76th Session (June 1989) to its 83rd Session (June 1996). The Committee notes that the Government has submitted proposals to the National Assembly concerning possible action with regard to these instruments and has proposed ratification of some of them. The Committee hopes that the Government will in due course indicate the decisions taken by the National Assembly with regard to the instruments that have been submitted.

Guinea-Bissau

The Committee regrets that the Government has not replied to its previous comments. It hopes that the Government will indicate shortly that the instruments adopted at the 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Haiti

The Committee observes that the Government has not responded to its previous observations. It hopes that the Government will indicate soon that the instruments remaining from the 67th Session (Conventions Nos. 154 and 155 and Recommendations Nos. 163 and 164), the instruments adopted at the 68th Session, the remaining instruments adopted at the 75th Session (Convention No. 168 and Recommendations Nos. 175 and 176), together with all the instruments adopted at the 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference, have been submitted to the competent authorities.

Honduras

1. The Committee regrets that the Government has not replied to the request for information that it has been making for many years with respect to the following points:

(a) with regard to the instruments adopted at the 69th, 71st and 72nd Sessions of the Conference which have already been submitted, the Committee requested the information required under *points II(b) and (c) and III of the questionnaire* at the end of the 1980 Memorandum;

(b) the Government is asked to provide a copy of the letter of submission of the instruments adopted at the 67th, 70th and 75th Sessions; and

(c) the Committee also requests the Government to indicate whether the Seafarers' Welfare Convention, 1987 (No. 163) and the Seafarers' Welfare Recommendation, 1987 (No. 173), adopted at the 74th (Maritime) Session, October 1987, have been submitted.

2. The Committee observes that the Government has also not provided the information requested on the submission of the instruments adopted between 1989 and 1997 at the 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions.

3. Under these circumstances, the Committee urges the Government to make every effort to honour the constitutional obligation of submission, if necessary with the appropriate assistance of the ILO's competent services, to overcome this serious delay.

Hungary

The Committee would be grateful if the Government would indicate whether the instruments adopted at the 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to Parliament.

India

Referring to its previous observations, the Committee takes note of the information provided according to which the Government is conscious of its obligations under the ILO Constitution and decisions taken on the pending instruments adopted by the Conference would be reported to the competent authority during 1998. It would be grateful if, as requested by the Memorandum of 1980, the Government would supply information on the substance of the documents by which the instruments adopted at the 78th, 79th, 80th, 81st, 82nd and 83rd Sessions were submitted. It hopes that the Government would indicate soon that the instruments adopted at the 84th and 85th Sessions of the Conference have also been submitted to the competent authorities.

Ireland

Further to its previous comments, the Committee notes with interest the information provided by the Government in relation to the submission to the competent authorities of the instruments adopted at the 72nd, 76th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference. It also notes that the Government has ratified the Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172), the Safety and Health in Mines Convention, 1995 (No. 176), and the Protocol of 1995 to the Labour Inspection Convention, 1947. The Committee trusts that the Government will continue to provide all the information required by the Memorandum of 1980 and will indicate soon that the instruments adopted at the 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Israel

The Committee notes the information provided by the Government in November 1998, to the effect that the Ministry of Labour and Social Affairs has taken steps towards the submission of the instruments adopted at the 81st, 82nd and 83rd Sessions of the Conference to the Knesset. It would be grateful if the Government would provide shortly the relevant information required by the Memorandum of 1980 with regard to the submission to the Knesset of the instruments adopted by the Conference at its 81st, 82nd, 83rd, 84th and 85th Sessions.

Kazakhstan

1. The Committee notes the information supplied by the Government to the effect that the instruments adopted at the 85th Session of the Conference will be presented for the approval of the Government in 1999. The Committee notes that the Republic of Kazakhstan has been a member State since 1993. It recalls that under article 19 of the Constitution of the International Labour Organization, each of the Members undertakes that it will bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action. The Governing Body of the International Labour Office adopted in 1980 a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars about this question. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted. The Committee trusts that the Government will report shortly on the submission to the competent authorities of the instruments adopted at the 80th, 82nd, 83rd, 84th and 85th Sessions of the Conference.

2. The Government may deem it useful to consider appropriate forms of ILO assistance in this area.

Kenya

The Committee regrets that the Government has not responded to its previous comments. It trusts that the Government will indicate shortly that the instruments adopted at the 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Kyrgyzstan

The Committee regrets that the Government has not responded to its previous comments. The Committee hopes that the Government will shortly indicate that the instruments adopted at the 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Latvia

1. The Committee notes that the Government has failed to reply to its previous comments. It trusts that the Government will in future discharge its obligation to submit the instruments adopted by the Conference to the competent authorities. It recalls that under article 19 of the Constitution of the International Labour Organization, each of the Members undertakes that it will bring the instruments adopted by the International Labour

Conference before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action. The Governing Body of the International Labour Office has adopted in 1980 a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars about this question. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted. The Committee trusts that the Government will report shortly on the submission to the competent authorities of the instruments adopted at the 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference

2. The Government may deem it useful to consider appropriate forms of ILO assistance in this area.

Lebanon

With reference to its previous comments, the Committee notes with interest the Government's detailed information on the submission to Parliament of certain instruments adopted by the International Labour Conference from its 31st to 50th Sessions and at the 83rd and 85th Sessions. It trusts that the Government will continue its efforts to submit to Parliament the remaining instruments adopted by the Conference for the period 1948 to 1966, namely: 31st Session, 1948 (Convention No. 87); 32nd Session, 1949 (Conventions Nos. 92 and 94 and Recommendation No. 84); 36th Session, 1953 (Recommendation No. 97); 38th Session, 1955 (Recommendations Nos. 99 and 100); 39th Session, 1956 (Recommendation No. 102); 41st Session (Maritime), 1958 (Recommendations Nos. 105 and 106); 43rd Session, 1960 (Convention No. 114) and 45th Session, 1961 (Recommendation No. 115). The Government is also asked to indicate whether the instruments adopted by the Conference at its 84th (Maritime) Session (October 1996) have been submitted to Parliament. The Committee hopes that the Government will continue to call on the assistance which the Office can provide with a view to settling the issues still pending.

Liberia

The Committee notes the statement by a Government representative to the Conference Committee to the effect that after the seven-year war period, the Ministry of Labour was making a frantic effort to catch up with its obligations to comply with the ILO Constitution and was collaborating with the multidisciplinary team in Dakar in this respect. The Committee hopes that, with the appropriate ILO assistance, the Government will be able to indicate shortly that the instruments adopted at the 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Lithuania

The Committee observes that the Government has not responded to its previous observations. It hopes that the Government will indicate soon that the instruments adopted at the 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Madagascar

The Committee notes with interest that the ratifications of Conventions Nos. 88, 98, 159 and 173 were registered on 3 June 1998. However, the Committee notes the firm hope expressed by the Conference Committee on the Application of Standards in June 1998 that Madagascar would in the very near future provide a report containing information on the submission to the competent authorities of the instruments adopted by the Conference. The Committee trusts that the Government will indicate shortly that the instruments adopted at the 55th, 69th (Recommendation No. 167), 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions have been submitted to the competent authorities.

Mali

The Committee regrets that the Government has not replied to its previous comments. It hopes that the Government will indicate shortly that the instruments adopted at the 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Mauritania

The Committee notes the report concerning the submission to the National Assembly of the instruments adopted by the Conference at its 78th, 79th and 81st Sessions, provided by the Government in June 1998. It trusts that the Government will take the necessary measures to enable it in the very near future to indicate that the instruments adopted by the Conference at its 81st, 82nd, 83rd, 84th and 85th Sessions have been submitted to the National Assembly.

Mauritius

Referring to its previous observations, the Committee has taken note with interest the detailed information provided by the Government according to which the instruments adopted at the 63rd, 65th, 66th, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the National Assembly.

Republic of Moldova

In the absence of a reply to its previous comments, the Committee hopes that the Government will shortly indicate that the instruments adopted at the 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Mongolia

1. The Committee notes that the Government has not replied to its previous comments. It recalls that under article 19 of the Constitution of the International Labour Organization, each of the Members undertakes that it will bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action. The Governing Body of the International Labour Office has adopted a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars about this question. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be

taken with regard to the instruments that have been submitted. The Committee trusts that the Government will report shortly on the submission to the competent authorities of the instruments adopted at the 82nd, 83rd, 84th and 85th Sessions of the Conference.

2. The Government may deem it useful to consider appropriate forms of ILO assistance in this area.

Morocco

The Committee notes with interest that the Government Council examined and approved the ratification of Conventions Nos. 138 and 181 on 8 September 1998. The Committee, nevertheless, notes that the Government has not responded to the points raised in its previous observations. The Committee hopes that the Government will shortly provide the information requested on the date of submission in *point II(a) of the questionnaire* on the end of the Memorandum of 1980 in respect of the instruments adopted at the 74th, 75th, 76th and 79th Sessions of the Conference. The Committee would be grateful if the Government would indicate whether the instruments adopted at the 77th, 78th, 80th, 81st, 82nd, 83rd and 84th Sessions of the Conference have been submitted to the competent authorities.

Papua New Guinea

1. The Committee recalls the information supplied in December 1997 and November 1998 by the Government to the effect that all submissions to the National Parliament must go through the National Executive Council (NEC), which is a body made up of all government ministers, for their consideration and endorsement. The submission included all the instruments adopted at the International Labour Conference from the 66th Session in 1980 to the 85th Session in 1997. Owing to the existing system which involves lengthy periods of time (more than 12 to 18 months) for the full process needed to submit to the National Parliament (the most competent authority) for enactment of legislation, the Department of Industrial Relations instead makes initial submission to the NEC for information and examination of the instruments for possible ratification. This submission is then followed with another submission to the National Parliament for enactment of legislation, or other actions as desired.

2. The Committee hopes that the Government will shortly be able to indicate that the instruments adopted from the 66th to the 85th Sessions of the Conference have been submitted to the National Parliament.

Saint Lucia

1. The Committee notes the indications provided by the Government in December 1998 to the effect that the Conventions and Recommendations which are expected to be submitted early in 1999 are Conventions Nos. 154 to No. 177 and Recommendations Nos. 162 to No. 184. The other instruments are expected to be completed before the middle of 1999.

2. The Committee refers to its previous comments and trusts that the Government will shortly indicate that all the instruments adopted by the International Labour Conference from 1980 to 1997 (that is, at the 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions) will be submitted to the competent authorities. It would be grateful if the Government would supply all the information and documents requested in this connection in the Memorandum adopted in 1980 by the Governing Body, particularly with regard to the nature of the

competent authorities and the Government's proposals or comments regarding the instruments in question *(points I(a) and II(b) of the questionnaire).*

3. The Committee recalls in this connection that the authorities to which these instruments must be submitted are those empowered to legislate and that governments have full freedom as to the content of the proposals they make concerning the instruments which are submitted to the competent authorities.

Sao Tome and Principe

The Committee regrets to note that once again this year the Government has not replied to the observations which have been made since 1992. The Committee trusts that the Government will indicate shortly that the instruments adopted at the 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Senegal

The Committee regrets that the Government has not replied to its previous comments. It hopes that the Government will indicate shortly that the instruments adopted at the 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Seychelles

1. The Committee notes the Government's communications sent to the Office in December 1997 and February 1998 indicating that action has already started and Conventions Nos. 148, 149, 150 and 151; and also Recommendations Nos. 156, 157, 158 and 159, adopted at the 63rd and 64th Session of the Conference, are being processed and will be submitted to the competent authority very shortly. The Committee recalls its previous observations, and urges the Government to act in order to be in a position to indicate very soon that the instruments adopted from 1977 to 1997 (at the 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference) have been submitted to the competent authorities in accordance with article 19, paragraphs 5(b) and 6(b), of the ILO Constitution.

2. In this connection, the Committee also recalls that the authorities to which the instruments must be submitted are those empowered to legislate — the People's Assembly in this case. It also recalls that the obligation to submit does not imply that governments have to propose ratification of the Conventions or the acceptance of the Recommendations in question. Governments have full freedom as to the content of the proposals they make concerning the instruments which are submitted to the competent authorities.

3. At this stage, the Committee invites the Government to consider appropriate forms of ILO assistance in this area.

Sierra Leone

The Committee regrets to observe that the Government has not responded to its previous observations. It hopes that it will indicate soon that the instruments adopted at the 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference, together with Convention No. 146 and Recommendation No. 154 adopted at the 62nd Session, have been submitted to the competent authorities.

Solomon Islands

The Committee notes with regret that once again, this year, the Government has not replied to the observations it has been making since 1992. It hopes that the Government will indicate very shortly whether proposals have been formulated for the instruments adopted at the 74th Session of the Conference which have already been submitted to the competent authorities and that it will specify the content of these proposals, as laid down in the Memorandum adopted in 1980 by the Governing Body *(point II(c) of the questionnaire)*. The Committee hopes that the Government will soon be in a position to inform it that the instruments adopted at the 70th, 71st, 72nd, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions have been submitted to the competent authorities.

Spain

1. The Committee notes the information provided by the Government in June 1998 to the effect that the Council of Ministers approved the proposals relative to the instruments adopted by the International Labour Conference at the 83rd and 84th Sessions.

2. Moreover, the Committee notes with interest the information communicated by the Government in December 1998 to the effect that the Council of Ministers has agreed to authorize the ratification of the Private Employment Agencies Convention, 1997 (No. 181), and has decided to submit the Convention to Parliament. It was also agreed to take account of Recommendation No. 188.

3. The Committee reiterates its hope that the Government shall shortly indicate that the instruments adopted at the 63rd (Convention No. 149 and Recommendation No. 157) and the 75th (Convention No. 168 and Recommendation No. 176) Sessions as well as the instruments adopted at the 80th, 81st, 83rd, 84th and 85th Sessions of the Conference have, in fact, been submitted to Parliament.

Sri Lanka

Further to its previous comments, the Committee notes with interest the detailed information forwarded by the Government indicating that the Ministry of Labour has presented to the Parliament the Conventions and Recommendations adopted by the International Labour Conference from June 1992 to June 1996. It would be grateful if the Government would also provide information on the submission to the Parliament of the Protocol of 1995 to the Labour Inspection Convention, 1947 (adopted at the 82nd Session) and of the instruments adopted at the 84th (Maritime, October 1996) and 85th (June 1997) Sessions of the Conference. Please include the other indications requested in *points II(a) and (b), III and V of the questionnaire* at the end of the Memorandum of 1980.

Sudan

The Committee regrets that the Government has not replied to its previous comments. It hopes that the Government will indicate shortly that the instruments adopted at the 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Suriname

The Committee notes that the Government has not replied to its previous comments. It trusts that the Government will indicate soon that the instruments adopted at the 67th

(Convention No. 154), 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authority.

Swaziland

Concerning its previous observations, the Committee notes the information supplied by the Government to the effect that the instruments adopted at the 78th, 79th, 80th, 81st, 82nd, 83rd and 84th Sessions of the Conference have been submitted to Cabinet. It also notes that the instruments adopted at the 85th Session are in the process of being submitted to the competent authorities. The Committee recalls that the authorities to which these instruments are to be submitted are the authorities empowered to legislate. It would be grateful if, as requested by the Memorandum of 1980, the Government would indicate what is the legislative body according to the Constitution or basic law of Swaziland (see *point I(b) of the questionnaire* at the end of the Memorandum) and would provide all the indications requested by the Memorandum on the submission to the competent authorities of the instruments adopted by the Conference from 1991 to 1997 (78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions).

Syrian Arab Republic

1. The Committee notes the Government's communication to the effect that a committee has been established to examine the points in respect of the submission of instruments in light of the constitutional and legal texts in force in the Syrian Arab Republic. The Committee also notes that the instruments adopted at the 85th Session of the Conference have been submitted to the Tripartite Consultative Committee established by Decree 12/4 of 30 October 1995. The Committee recalls that article 19 of the Constitution of the International Labour Organization lays down the obligation for member States to submit the instruments adopted by the International Labour Conference to the competent authorities, namely the People's Assembly (Majlis al-Chaab). The Governing Body specifies in the Memorandum of 1980 that *discussion in a deliberative assembly — or at least information of the assembly — can constitute an important factor in the complete examination of a question and in a possible improvement of measures taken at the national level; in the case of Conventions it might result in a decision to ratify.* Moreover, *the obligation of governments to submit the instruments to the competent authorities does not imply any obligation to propose the ratification or the application of the instrument in question.*

2. The Committee notes that the instruments adopted by the International Labour Conference over a period of several years have only been communicated to the Council of Ministers; consequently, the Committee of Experts considers that these instruments have not, in fact, been submitted to the competent authorities. The Committee hopes that the Government will shortly indicate that the instruments adopted at the 66th, 69th (Recommendations Nos. 167 and 168), 70th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the People's Assembly and that the Government will provide the information requested in the Memorandum of 1980.

United Republic of Tanzania

1. The Committee notes with interest that the ratification of the Collective Bargaining Convention, 1981 (No. 154), was registered on 14 August 1998 and that the Government has also sent to the ILO an instrument of ratification for the Minimum Age Convention, 1973 (No. 138). It further notes that the Government has recommended to

the competent authority for ratification the Chemicals Convention, 1990 (No. 170) (adopted at the 77th Session), and the Protocol of 1995 to the Labour Inspection Convention, 1947 (adopted at the 82nd Session).

2. The Committee also notes that the ILO Eastern Africa Multidisciplinary Advisory Team has been providing assistance to the Government in order to overcome the long delay concerning the obligation of submission. It recalls that in previous observations it has asked the Government to indicate the date on which the instruments adopted from the 54th to the 65th Sessions and at the 69th, 70th and 71st Sessions, were submitted to Parliament.

3. The Committee observes that the Government has failed to provide information on submission to the competent authorities of the instruments adopted at the 66th, 67th, 68th, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd 83rd, 84th and 85th Sessions of the Conference. The Committee urges the Government to act in order to be in a position to indicate very soon that all the remaining instruments adopted from 1980 to 1997 (at the 66th, 67th, 68th, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference) have been submitted to the competent authorities in accordance with article 19 of the ILO Constitution.

4. In this connection, the Committee also recalls that the authorities to which the instruments must be submitted are those empowered to legislate — the Parliament of the United Republic of Tanzania in this case. It also recalls that the obligation to submit does not imply that governments have to propose the ratification of the Conventions or Protocols, or the acceptance of the Recommendations in question. Governments have full freedom as to the content of the proposals they make concerning the instruments which are submitted to the competent authorities.

5. In these circumstances, the Committee invites the Government to consider appropriate forms of ILO assistance in this area.

Turkmenistan

The Committee regrets to observe that the Government has not responded to its previous comments. It hopes that the Government will shortly indicate that the instruments adopted at the 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Uruguay

The Committee would be grateful if the Government would indicate whether the instruments adopted at the 80th, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Uzbekistan

The Committee notes with regret that the Government has not replied to its previous comments. It hopes that the Government will indicate shortly that the instruments adopted at the 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

Venezuela

1. The Committee notes that the executive authorities have submitted the draft law and associated explanatory comments relating to the Indigenous and Tribal Peoples Convention, 1989 (No. 169). The Committee trusts that the Government will inform it of

any decision made by the National Congress in this respect (see *point III of the questionnaire* at the end of the 1980 Memorandum).

2. Similarly, the Committee notes that certain instruments adopted by the International Labour Conference at its 75th (1988), 77th (1990) and 82nd (1995) Sessions have been submitted to the National Congress. The Committee trusts that the Government will be able to indicate as soon as possible that the other instruments adopted at these sessions of the Conference have also been submitted to the National Congress, namely: 75th Session (Convention No. 168 and Recommendation No. 176); 77th Session (Convention No. 171 and Recommendation No. 178, and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89)); and 82nd Session (the 1995 Protocol to the Labour Inspection Convention, 1947 (No. 81)).

3. The Committee refers to its earlier observations and reiterates its hope that the instruments adopted by the Conference at its 71st Session (Convention No. 161), 74th Session (Conventions Nos. 163, 164, 165 and 166, and Recommendation No. 174), 75th, 76th, 77th and 78th Sessions (Convention No. 172), 79th, 80th, 81st and 82nd Sessions (Convention No. 176), 83rd, 84th and 85th Sessions will be submitted as soon as possible to the Congress.

4. The Committee reminds the Government of the possibility of obtaining technical assistance from the competent services of the ILO in order to resolve these very long-standing issues.

Yemen

The Committee notes the documents communicated by the Ministry of Labour and Vocational Training to the Council of Ministers regarding the submission to the competent authorities of the instruments adopted by the International Labour Conference at its 74th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions. The Committee recalls that, in accordance with article 19 of the ILO Constitution, the competent national authority to which the instruments should normally be submitted is the legislature. It hopes that the Government will indicate shortly that the instruments adopted at the 74th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions of the Conference have been submitted to the competent authorities.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belarus, Botswana, Burkina Faso, Burundi, Cambodia, Canada, Cape Verde, Chile, China, Colombia, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of Congo, Denmark, Dominican Republic, Estonia, Fiji, Finland, France, Gambia, Germany, Guinea, Guyana, Indonesia, Islamic Republic of Iran, Iraq, Italy, Jordan, Kuwait, Lao People's Democratic Republic, Lesotho, Libyan Arab Jamahiriya, Luxembourg, Malawi, Malaysia, Malta, Mexico, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Qatar, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Slovakia, Slovenia, South Africa, Sweden, Switzerland, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, United Kingdom, United States, Viet Nam, Zambia, Zimbabwe.*

Appendix I. Information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities

(31st to 85th Sessions of the International Labour Conference, 1948-97)[1]

Note. The number of the Convention or Recommendation is given in parentheses, preceded by the letter "C" or "R" as the case may be, when only some of the texts adopted at any one session have been submitted. The Protocols are indicated by the letter "P" followed by the year of adoption of the Protocol. Ratified Conventions are considered as having been submitted.

Account has been taken of the date of admission or readmission of States Members to the ILO for determining the sessions of the Conference whose texts are taken into consideration.

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Afghanistan	31-70	71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85
Albania	85	78, 79, 80, 81, 82, 83, 84
Algeria	47-82	83, 84, 85
Angola	61-79	80, 81, 82, 83, 84, 85
Antigua and Barbuda	68-81	82, 83, 84, 85
Argentina	31-82	83, 84, 85
Armenia	–	80, 81, 82, 83, 84, 85
Australia	31-82	83, 84, 85
Austria	31-82	83, 84, 85
Azerbaijan	79 (C 173), 80-82, 85	79 (R 180), 83, 84
Bahamas	61-84	85
Bahrain	63-84	85
Bangladesh	58-76, 77 (C 171; R 178), 80	77 (C 170; R 177), 78, 79, 81, 82, 83, 84, 85
Barbados	51-81, 83-85	82
Belarus	37-83	84, 85
Belgium	31-75, 77, 80	76, 78, 79, 81, 82, 83, 84, 85
Belize	68-76	77, 78, 79, 80, 81, 82, 83, 84, 85
Benin	45-78	79, 80, 81, 82, 83, 84, 85
Bolivia	31-79	80, 81, 82, 83, 84, 85
Bosnia and Herzegovina	–	80, 81, 82, 83, 84, 85
Botswana	64-83	84, 85

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[1] The Conference did not adopt any Conventions or Recommendations at its 57th Session (June 1972) and 73rd Session (June 1987).

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Brazil	31-50, 51 (C 127; R 128, 129, 130, 131), 53 (R 133, 134), 54-62, 63 (C 148; R 156, 157), 64 (R 158, 159), 65-66, 67 (C 154, 155; R 163, 164, 165), 68 (C 158; R 166), 69-77	51 (C 128), 52, 53 (C 129, 130), 63 (C 149), 64 (C 150, 151), 67 (C 156), 68 (C 157), 76, 79, 80, 81, 82, 83, 84, 85
Bulgaria	31-83, 84 (C 178, 179, 180; P 1996), 85	84 (R 185, 186, 187)
Burkina Faso	45-81	82, 83, 84, 85
Burundi	47-81	82, 83, 84, 85
Cambodia	53-54, 56	55, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85
Cameroon	44-68, 72, 74	69, 70, 71, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85
Canada	31-84	85
Cape Verde	65-81	82, 83, 84, 85
Central African Republic	45-74	75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85
Chad	45-79	80, 81, 82, 83, 84, 85
Chile	31-81, 82 (C 176; R 183), 83	82 (P 1995), 84, 85
China	69-83, 84 (C 178, 179, 180; R 185, 186, 187)	84 (P 1996), 85
Colombia	31-74, 75 (C 167; R 175, 176), 76-78, 79 (R 180), 80, 81 (C 175)	75 (C 168), 79 (C 173), 81 (R 182), 82, 83, 84, 85
Comoros	65-78	79, 80, 81, 82, 83, 84, 85
Congo	45-53, 54 (C 131, 132), 55 (C 133, 134), 56, 58 (C 138; R 146), 59, 60 (C 142), 61 (C 144), 63 (C 148, 149; R 157), 64-66, 67 (C 154, 155, 156), 68 (C 158), 71 (C 160, 161), 75 (C 167, 168), 76	54 (R 135, 136), 55 (R 137, 138, 139, 140, 141, 142), 58 (C 137; R 145), 60 (C 141, 143; R 149, 150, 151), 61 (R 152), 62, 63 (R 156), 67 (R 163, 164, 165), 68 (C 157; R 166), 69, 70, 71 (R 170, 171), 72, 74, 75 (R 175, 176), 77, 78, 79, 80, 81, 82, 83, 84, 85
Costa Rica	31-74, 75 (C 168; R 175, 176), 76-77, 78 (C 172), 79 (C 173), 81 (C 175), 82 (C 176)	75 (C 167), 78 (R 179), 79 (R 180), 80, 81 (R 182), 82 (R 183; P 1995), 83, 84, 85
Côte d'Ivoire	45-82	83, 84, 85
Croatia	–	80, 81, 82, 83, 84, 85
Cuba	31-83, 84 (C 178, 179, 180; R 185, 186, 187), 85	84 (P 1996)
Cyprus	45-81	82, 83, 84, 85
Czech Republic	80-83, 85	84

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Democratic Republic of the Congo	45-82	83, 84, 85
Denmark	31-83	84, 85
Djibouti	64-65, 67, 71-72, 83	66, 68, 69, 70, 74, 75, 76, 77, 78, 79, 80, 81, 82, 84, 85
Dominica	68-79	80, 81, 82, 83, 84, 85
Dominican Republic	31-83, 84 (C 178, 179, 180; R 185, 186, 187), 85	84 (P 1996)
Ecuador	31-74, 75 (R 175, 176), 76, 77 (R 177, 178), 78 (R 179), 79 (R 180), 80 (R 181), 81 (R 182), 82 (R 183), 83-85	75 (C 167, 168), 77 (C 170, 171), 78 (C 172), 79 (C 173), 80 (C 174), 81 (C 175), 82 (C 176; P 1995)
Egypt	31-85	–
El Salvador	31-61, 63 (C 149), 64 (C 150), 69 (C 159; R 168), 71-81	62, 63 (C 148; R 156, 157), 64 (C 151; R 158, 159), 65, 66, 67, 68, 69 (R 167), 70, 82, 83, 84, 85
Equatorial Guinea	67-79, 84	80, 81, 82, 83, 85
Eritrea	80	81, 82, 83, 84, 85
Estonia	79-82	83, 84, 85
Ethiopia	31-85	–
Fiji	59-82	83, 84, 85
Finland	31-84	85
France	31-83	84, 85
Gabon	45-72, 75-81	74, 82, 83, 84, 85
Gambia	–	82, 83, 84, 85
Georgia	–	80, 81, 82, 83, 84, 85
Germany	34-74, 75 (C 167; R 175), 76, 80-85	75 (C 168; R 176), 77, 78, 79
Ghana	40-79	80, 81, 82, 83, 84, 85
Greece	31-85	–
Grenada	66-80	81, 82, 83, 84, 85
Guatemala	31-70, 71 (C 160, 161; R 171), 72, 75 (C 167; R 175), 76, 83	71 (R 170), 74, 75 (C 168; R 176), 77, 78, 79, 80, 81, 82, 84, 85
Guinea	43-83	84, 85
Guinea-Bissau	63-78	79, 80, 81, 82, 83, 84, 85
Guyana	50-83	84, 85
Haiti	31-66, 67 (C 156; R 165), 69-74, 75 (C 167)	67 (C 154, 155; R 163, 164), 68, 75 (C 168; R 175, 176), 76, 77, 78, 79, 80, 81, 82, 83, 84, 85

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Honduras	39-66, 68-69, 71-72, 74 (C 164, 165, 166; R 174), 75 (C 167), 76	67, 70, 74 (C 163; R 173), 75 (C 168; R 175, 176), 77, 78, 79, 80, 81, 82, 83, 84, 85
Hungary	31-83	84, 85
Iceland	31-85	–
India	31-77	78, 79, 80, 81, 82, 83, 84, 85
Indonesia	33-84	85
Islamic Republic of Iran	31-83, 85	84
Iraq	31-84	85
Ireland	31-82	83, 84, 85
Israel	32-80	81, 82, 83, 84, 85
Italy	31-83	84, 85
Jamaica	47-85	–
Japan	35-85	–
Jordan	39-85	–
Kazakhstan	–	80, 81, 82, 83, 84, 85
Kenya	48-80	81, 82, 83, 84, 85
Republic of Korea	79-85	–
Kuwait	45-76, 78-79, 80 (C 174), 81-84	77, 80 (R 181), 85
Kyrgyzstan	–	79, 80, 81, 82, 83, 84, 85
Lao People's Democratic Republic	48-81	82, 83, 84, 85
Latvia	80	79, 81, 82, 83, 84, 85
Lebanon	31 (C 88, 89, 90; R 83), 32 (C 91, 93, 95, 96, 97, 98; R 85, 86, 87), 33-37, 38 (C 104), 39-40, 41 (C 108), 42, 43 (C 112, 113; R 112), 44 , 45 (C 116), 46-83, 85	31 (C 87), 32 (C 92, 94; R 84), 36 (R 97), 38 (R 99, 100), 39 (R 102), 41 (R 105, 106), 43 (C 114), 45 (R 115), 84
Lesotho	66-81	82, 83, 84, 85
Liberia	31-75	76, 77, 78, 79, 80, 81, 82, 83, 84, 85
Libyan Arab Jamahiriya	35-82	83, 84, 85
Lithuania	79	80, 81, 82, 83, 84, 85
Luxembourg	31-85	–
Madagascar	45-54, 56-68, 69 (C 159; R 168), 70, 79	55, 69 (R 167) 71, 72, 74, 75, 76, 77, 78, 80, 81, 82, 83, 84, 85
Malawi	49-81	82, 83, 84, 85
Malaysia	41-76, 77 (C 170, 171; R 177, 178), 78-83, 85	77 (P 1990), 84
Mali	44-78	79, 80, 81, 82, 83, 84, 85

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Malta	49-82, 84 (C 178, 179, 180; P 1996)	83, 84 (R 185, 186, 187), 85
Mauritania	45-80	81, 82, 83, 84, 85
Mauritius	53-85	–
Mexico	31-81, 82 (C 176; R 183), 83	82 (P 1995), 84, 85
Republic of Moldova	79-80	81, 82, 83, 84, 85
Mongolia	53-81	82, 83, 84, 85
Morocco	39-76, 79, 85	77, 78, 80, 81, 82, 83, 84
Mozambique	61-82	83, 84, 85
Myanmar	31-85	–
Namibia	78-83, 85	84
Nepal	51-81, 83, 85	82, 84
Netherlands	31-85	–
New Zealand	31-84	85
Nicaragua	40-85	–
Niger	45-82	83, 84, 85
Nigeria	45-79, 81-82	80, 83, 84, 85
Norway	31-85	–
Oman	81-83	84, 85
Pakistan	31-80	81, 82, 83, 84, 85
Panama	31-83, 85	84
Papua New Guinea	61-65	66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85
Paraguay	40-84	85
Peru	31-83	84, 85
Philippines	31-83	84, 85
Poland	31-85	–
Portugal	31-85	–
Qatar	58-83, 85	84
Romania	39-85	–
Russian Federation	37-83	84, 85
Rwanda	47-79, 81	80, 82, 83, 84, 85
Saint Kitts and Nevis	–	83, 84, 85
Saint Lucia	–	66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85
Saint Vincent and the Grenadines	–	82, 83, 84, 85

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
San Marino	69-85	–
Sao Tome and Principe	68-76	77, 78, 79, 80, 81, 82, 83, 84, 85
Saudi Arabia	61-83, 85	84
Senegal	44-78	79, 80, 81, 82, 83, 84, 85
Seychelles	–	63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85
Sierra Leone	45-61, 62 (C 145, 147; R 153, 155)	62 (C 146; R 154), 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85
Singapore	50-84	85
Slovakia	79-83	84, 85
Slovenia	79-83, 84 (C 179)	84 (C 178, 180; R 185, 186, 187; P 1996), 85
Solomon Islands	74	70, 71, 72, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85
Somalia	45-75	76, 77, 78, 79, 80, 81, 82, 83, 84, 85
South Africa	81, 82	83, 84, 85
Spain	39-62, 63 (C 148; R 156), 64-74, 75 (C 167; R 175), 76-79, 82	63 (C 149; R 157), 75 (C 168; R 176), 80, 81, 83, 84, 85
Sri Lanka	31-81, 82 (C 176; R 183), 83	82 (P 1995), 84, 85
Sudan	39-80	81, 82, 83, 84, 85
Suriname	61-80	81, 82, 83, 84, 85
Swaziland	60-77	78, 79, 80, 81, 82, 83, 84, 85
Sweden	31-83	84, 85
Switzerland	31-84	85
Syrian Arab Republic	31-65, 67-69, 71-76	66, 70, 77, 78, 79, 80, 81, 82, 83, 84, 85
Tajikistan	81-83	84, 85
United Republic of Tanzania	46-65, 67 (C 154; R 163), 69-71	66, 67 (C 155, 156; R 164, 165), 68, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85
Thailand	31-82	83, 84, 85
The former Yugoslav Republic of Macedonia	80-82	83, 84, 85
Togo	44-85	–
Trinidad and Tobago	47-85	–
Tunisia	39-85	–
Turkey	31-85	–

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Turkmenistan	–	81, 82, 83, 84, 85
Uganda	47-80	81, 82, 83, 84, 85
Ukraine	37-85	–
United Arab Emirates	58-83, 85	84
United Kingdom	31-83	84, 85
United States	31-84	85
Uruguay	31-79, 81	80, 82, 83, 84, 85
Uzbekistan	–	80, 81, 82, 83, 84, 85
Venezuela	31-70, 71 (C 160; R 170, 171), 72, 74 (R 173), 75 (C 167; R 175), 76, 77 (C 170; R 177), 78 (R 179), 80, 82 (C 176; R 183)	71 (C 161), 74 (C 163, 164, 165, 166; R 174), 75 (C 168; R 176), 77 (C 171; R 178, P 1990), 78 (C 172), 79, 81, 82 (P 1995), 83, 84, 85
Viet Nam	80-85	–
Yemen	49-72, 75	74, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85
Zambia	49-82	83, 84, 85
Zimbabwe	66-79, 85	80, 81, 82, 83, 84

Appendix II. Overall position of member States as at 11 December 1998

Sessions at which decisions were adopted	Number of States in which, according to information supplied by the Government:			Number of States which were Members of the Organization at the time of the session
	all the texts have been submitted	some of these texts have been submitted	none of these texts have been submitted (including cases in which no information has been supplied by the Government)	
31 (June 1948)	59	1	–	60
32 (June 1949)	60	1	–	61
33 (June 1950)	63	– *	–	63
34 (June 1951)	64	–	–	64
35 (June 1952)	66	–	–	66
36 (June 1953)	65	–	1	66
37 (June 1954)	69	– *	–	69
38 (June 1955)	68	1	–	69
39 (June 1956)	75	1	–	76
40 (June 1957)	77	–	–	77
41 (April/May 1958)	78	1	–	79
42 (June 1958)	79	–	–	79
43 (June 1959)	79	–	–	79
44 (June 1960)	83	–	–	83
45 (June 1961)	100	1	–	101
46 (June 1962)	102	–	–	102
47 (June 1963)	108	–	–	108
48 (June/July 1964)	110	–	–	110
49 (June 1965)	114	–	–	114
50 (June 1966)	115	–	–	115
51 (June 1967)	116	1	–	117
52 (June 1968)	117	– *	1	118
53 (June 1969)	120	1	–	121
54 (June 1970)	121	–	–	121
55 (October 1970)	118	1	2	121
56 (June 1971)	121	–	–	121
58 (June 1973)	120	2	1	123
59 (June 1974)	123	1	1	125

Sessions at which decisions were adopted	Number of States in which, according to information supplied by the Government:			Number of States which were Members of the Organization at the time of the session
	all the texts have been submitted	some of these texts have been submitted	none of these texts have been submitted (including cases in which no information has been supplied by the Government)	
60 (June 1975)	124	2	–	126
61 (June 1976)	124	–	7	131
62 (October 1976)	125	1	6	132
63 (June 1977)	115	5	15	135
64 (June 1978)	128	3	5	136
65 (June 1979)	128	2	9	139
66 (June 1980)	123	–*	21	144
67 (June 1981)	130	5	10	145
68 (June 1982)	128	4	18	150
69 (June 1983)	132	3	15	150
70 (June 1984)	127	–*	23	150
71 (June 1985)	129	6	15	150
72 (June 1986)	132	2	16	150
74 (Sept./Oct. 1987)	125	1	24	150
75 (June 1988)	133	4	13	150
76 (June 1989)	113	–	37	150
77 (June 1990)	101	1	48	150
78 (June 1991)	101	–	48	149
79 (June 1992)	92	1	64	157
80 (June 1993)	103	1	67	171
81 (June 1994)	96	5	70	171
82 (June 1995)	85	7	81	173
83 (June 1996)	69	2	102	173
84 (October 1996)	41	6	127	174
85 (June 1997)	41	–	133	174

* At this session the Conference adopted one Recommendation only.

Appendix III. Summary of information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities

Article 19 of the Constitution of the International Labour Organization prescribes, in paragraphs 5, 6 and 7, that Members shall bring the Conventions, Recommendations and Protocols adopted by the International Labour Conference before the competent authorities within a specified period. Under the same provisions the governments of member States shall inform the Director-General of the International Labour Office of the measures taken to submit the instruments to the competent authorities, and also communicate particulars of the authority or authorities regarded as competent, and of the action taken by them.

In accordance with article 23 of the Constitution a summary of the information communicated in pursuance of article 19 is submitted to the Conference.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification. In this connection, the summarized information will appear in an annex to the report of the Committee of Experts on the Application of Conventions and Recommendations.

The present summary contains information relating to the submission to the competent authorities of the instruments adopted by the Conference at its 84th (Maritime) Session held in Geneva from 4 to 22 October 1996 and at its 85th Session, also held in Geneva from 3 to 19 June 1997.

The period of one year provided for the submission to the competent authorities of the instruments adopted at the 84th (Maritime) Session expired on 22 October 1997, and the period of 18 months on 22 April 1998.

The period of one year provided for the submission to the competent authorities of the Convention and Recommendation adopted at the 85th Session expired on 19 June 1998, and the period of 18 months on 18 December 1998.

This summarized information consists of communications which were forwarded to the Director-General of the International Labour Office after the close of the 86th Session of the Conference and which could not, therefore, be laid before the Conference at that session.

List of instruments adopted by the Conference at its 72nd to 85th Sessions

72nd Session (1986)

Asbestos Convention (No. 162);
Asbestos Recommendation (No. 172)

73rd Session (1987)

The Conference did not adopt any Conventions or Recommendations at this session.

74th (Maritime) Session (1987)

Seafarers' Welfare Convention (No. 163);
Health Protection and Medical Care (Seafarers) Convention (No. 164);
Social Security (Seafarers) (Revised) Convention (No. 165);
Repatriation of Seafarers (Revised) Convention (No. 166);

Seafarers' Welfare Recommendation (No. 173);
Repatriation of Seafarers Recommendation (No. 174).

75th Session (1988)
Safety and Health in Construction Convention (No. 167);
Employment Promotion and Protection against Unemployment Convention (No. 168);
Safety and Health in Construction Recommendation (No. 175);
Employment Promotion and Protection against Unemployment Recommendation (No. 176).

76th Session (1989)
Indigenous and Tribal Peoples Convention (No. 169).

77th Session (1990)
Chemicals Convention (No. 170);
Night Work Convention (No. 171);
Protocol to the Night Work (Women) Convention (Revised), 1948;
Chemicals Recommendation (No. 177);
Night Work Recommendation (No. 178).

78th Session (1991)
Working Conditions (Hotels and Restaurants) Convention (No. 172);
Working Conditions (Hotels and Restaurants) Recommendation (No. 179).

79th Session (1992)
Protection of Workers' Claims (Employer's Insolvency) Convention (No. 173);
Protection of Workers' Claims (Employer's Insolvency) Recommendation (No. 180).

80th Session (1993)
Prevention of Major Industrial Accidents Convention (No. 174);
Prevention of Major Industrial Accidents Recommendation (No. 181).

81st Session (1994)
Part-Time Work Convention (No. 175);
Part-Time Work Recommendation (No. 182).

82nd Session (1995)
Safety and Health in Mines Convention, 1995 (No. 176);
Safety and Health in Mines Recommendation, 1995 (No. 183);
Protocol of 1995 to the Labour Inspection Convention, 1947

83rd Session (June 1996)
Home Work Convention (No. 177);
Home Work Recommendation (No. 184).

84th (Maritime) Session (October 1996)

Labour Inspection (Seafarers) Convention (No. 178);

Recruitment and Placement of Seafarers Convention (No. 179);

Seafarers' Hours of Work and the Manning of Ships Convention (No. 180);

Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147);

Labour Inspection (Seafarers) Recommendation (No. 185);

Recruitment and Placement of Seafarers Recommendation (No. 186);

Seafarers' Hours of Work and the Manning of Ships Recommendation (No. 187).

85th Session (1997)

Private Employment Agencies Convention (No. 181);

Private Employment Agencies Recommendation (No. 188).

Summary of information on the submission to the competent authorities of the instruments adopted by the International Labour Conference at its 84th (Maritime) Session (Geneva, October 1996) and its 85th Session (Geneva, June 1997)

The Committee has deemed it appropriate in certain cases to request additional information on the nature of the competent authorities to which instruments adopted by the International Labour Conference are submitted.

Albania. The instruments adopted at the 85th Session of the Conference have been submitted to the People's Assembly.

Azerbaijan. The instruments adopted at the 85th Session of the Conference have been submitted to Parliament.

Bahrain. The instruments adopted at the 84th Session of the Conference have been submitted to the competent authority.

Barbados. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to Parliament.

Bulgaria. Certain instruments adopted at the 84th Session and the instruments adopted at the 85th Session of the Conference have been submitted to the National Assembly.

Canada. The instruments adopted at the 84th Session of the Conference have been submitted to Parliament.

China. Certain instruments adopted at the 84th Session of the Conference have been submitted to the competent authority.

Cuba. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to a competent authority.

Czech Republic. The instruments adopted at the 85th Session of the Conference have been submitted to Parliament.

Dominican Republic. Certain instruments adopted at the 84th Session and the instruments adopted at the 85th Session of the Conference have been submitted to the National Congress.

Ecuador. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the National Congress.

Egypt. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the People's Assembly.

Ethiopia. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the Council of People's Representatives.

Finland. The instruments adopted at the 84th Session of the Conference have been submitted to Parliament.

Germany. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to Parliament.

Greece. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the Chamber of Deputies.

Iceland. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the Althing (Parliament).

Indonesia. The instruments adopted at the 84th Session of the Conference have been submitted to the Chamber of People's Representatives.

Islamic Republic of Iran. The instruments adopted at the 85th Session of the Conference have been submitted to the competent authorities.

Iraq. The instruments adopted at the 84th Session of the Conference have been submitted to the competent authorities.

Jamaica. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to Parliament.

Japan. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the Diet.

Jordan. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the competent authority.

Republic of Korea. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the National Assembly.

Lebanon. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to Parliament.

Luxembourg. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the Chamber of Deputies.

Malaysia. The instruments adopted at the 85th Session of the Conference have been submitted to the competent authority.

Malta. Certain instruments adopted at the 84th Session of the Conference have been submitted to the Chamber of Representatives.

Mauritius. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the National Assembly.

Morocco. The instruments adopted at the 85th Session of the Conference have been submitted to the competent authority.

Myanmar. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the competent authority.

Namibia. The instruments adopted at the 85th Session of the Conference have been submitted to Parliament.

Nepal. The instruments adopted at the 85th Session of the Conference have been submitted to the National Parliament.

Netherlands. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to Parliament.

New Zealand. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the House of Representatives.

Nicaragua. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the National Assembly.

Norway. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the Storting (Parliament).

Panama. The instruments adopted at the 85th Session of the Conference have been submitted to the Legislative Assembly.

Paraguay. The instruments adopted at the 84th Session of the Conference have been submitted to the National Parliament.

Poland. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the Sejm.

Portugal. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the Assembly of the Republic.

Qatar. The instruments adopted at the 85th Session of the Conference have been submitted to the competent authority.

Romania. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the Chamber of Deputies and to the Senate.

San Marino. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to Parliament.

Saudi Arabia. The instruments adopted at the 84th Session of the Conference have been submitted to the competent authority.

Singapore. The instruments adopted at the 84th Session of the Conference have been submitted to Parliament.

Switzerland. The instruments adopted at the 84th Session of the Conference have been submitted to Parliament.

Togo. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the National Assembly.

Trinidad and Tobago. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to Parliament.

Tunisia. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the Chamber of Deputies.

Turkey. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the Grand National Assembly.

Ukraine. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the Supreme Council.

United Arab Emirates. The instruments adopted at the 85th Session of the Conference have been submitted to the competent authority.

United States. The instruments adopted at the 84th Session of the Conference have been submitted to the Senate.

Viet Nam. The instruments adopted at the 84th and 85th Sessions of the Conference have been submitted to the National Assembly.

Zimbabwe. The instruments adopted at the 85th Session of the Conference have been submitted to Parliament.

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